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STREAMLINING REGULATION, IMPROVING CONSUMER PROTECTION, AND INCREASING COMPETITION IN INSURANCE MARKETS

HEARING

BEFORE THE

SUBCOMMITTEE ON
SECURITIES, INSURANCE, AND INVESTMENT

OF THE

COMMITTEE ON
BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

ON

EXAMINING THE CHALLENGES AND BENEFITS POSED BY THE CURRENT SYSTEM OF INSURANCE LICENSING FOR AGENTS AND BROKERS OPERATING OUTSIDE OF THEIR HOME STATES, AND FOR REGULATORS SUPERVISING THEM

MARCH 19, 2013

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C O N T E N T S

TUESDAY, MARCH 19, 2013

WITNESSES

Additional Material Supplied for the Record

STREAMLINING REGULATION, IMPROVING CONSUMER PROTECTION, AND INCREASING COMPETITION IN INSURANCE MARKETS

TUESDAY, MARCH 19, 2013

U.S. SENATE,
SUBCOMMITTEE ON SECURITIES, INSURANCE, AND INVESTMENT,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The Subcommittee convened at 3 p.m. in room 538 Dirksen Senate Office Building, Hon. Jon Tester, Chairman of the Subcommittee, presiding.

OPENING STATEMENT OF CHAIRMAN JON TESTER

Senator TESTER. I want to call to order this hearing of the Securities, Insurance, and Investment Subcommittee. This hearing is entitled, "Streamlining Regulation, Improving Consumer Protection, and Increasing Competition in Insurance Markets."

I look forward to hearing from our witnesses this afternoon about some of the challenges and benefits posed by the current system of insurance licensing for insurance agents and brokers operating outside of their home States and for the regulators tasked with supervising them.

Currently, an agent or broker seeking to operate in multiple States must do so in each State individually, meeting different State-specific requirements and seeking approval from each State's jurisdiction, a process that can be time consuming and unwieldy.

Senator Johanns and I introduced legislation last year, the National Association of Registered Agents and Brokers Act, to create a nonprofit association to provide one-stop licensing for agents and brokers operating outside of their home State while preserving the authority of State insurance regulators to supervise these markets.

Our legislation, S. 534, which we just reintroduced last week with 12 bipartisan cosponsors, would provide insurance producers with the option of becoming a member of the National Association of Registered Agents and Brokers, or otherwise called NARAB, provided they meet the professional standards set by the Association. Membership in NARAB would streamline the licensing process for agents and brokers, enabling them to be licensed once under a single standard rather than following different standards in each State, thus saving time and money. The Association would set rigorous professional and consumer protection standards while preserving the ability for regulators to supervise and discipline producers.

The concept of NARAB was first introduced in 1999 in the Gramm-Leach-Bliley Act. More recently, it has been introduced as stand-alone legislation. The legislation that Senator Johanns and I have introduced enjoys the support of the National Association of Insurance Commissioners and representatives of the insurance industry, including those representatives with us here today.

I think it is fitting that Senator Johanns and I begin our tenure as Chair and Ranking Member of this Subcommittee focused on this common sense legislation which we both want to see signed into law. And let me say how much I look forward to working with Senator Johanns and his staff on this Subcommittee to build consensus, to hold agencies accountable, and ensure that regulations and markets function fairly and efficiently. We have our work cut out for us, but I know that Senator Johanns will be a great partner.

I am looking forward to hearing from all of our witnesses this afternoon about the impact of the NARAB legislation, its evolution over time, and its potential impact on consumer protection, market competition, and the State system of insurance regulation.

With that, I turn it over to you, Senator Johanns, for your opening statement.

STATEMENT OF SENATOR MIKE JOHANNS

Senator JOHANNS. Well, thank you, Mr. Chairman, for calling this hearing, first of all, and to our panel of witnesses, thank you for being here today. We appreciate it.

I also want to offer a word of thanks to the Senator from Montana for his leadership on S. 534, the National Association of Registered Agents and Brokers Reform Act of 2013, a piece of legislation that, as the Senator indicated, we want to see signed into law, and we look forward to the discussion today.

I also want to say a special thanks to a good friend, Scott Trofholz from Omaha. Thank you for making the trek back out here. We just saw you recently, so it is good to see you here. The subject under discussion today, as we all know, is an important one to insurance agents and brokers in Nebraska, but for that matter, it is important across the United States.

If we succeed in reducing administrative and bureaucratic barriers to entry in the interstate insurance marketplace, it logically follows that competition will increase and, hopefully, costs will go down. Obviously, this represents a win for everybody involved. Our small business insurance producers will face a reduced burden in obtaining licensing in other States. Customers will have greater access to insurance producers and products. And the vital role of our State insurance regulators will be preserved.

The State-based insurance regulatory regime is one that works well, but I am extremely sympathetic to the administrative burden borne by our Nebraska-based producer who is seeking to write policies on a customer's business venture mere miles away across the river in Iowa, write a policy on the vacation home in Colorado, and maybe the retirement property that they invested in in Arizona, hoping for that day of retirement.

I look forward to hearing from the insurance producers on our panel today about the specific challenges they face with the current system of insurance licensing and what the proposed legislation might do to help.

I am also interested in hearing from the panelists on how they feel market competition may increase as a result of the framework of this legislation and to what extent this potential increase may result in increased insurance options for consumers.

Further, I am encouraged that this legislation does have the support of the National Association of Insurance Commissioners, and I look forward to hearing Commissioner Lindeen's perspective on the role our State insurance commissioners envision playing if this legislation is enacted.

I also want to wrap up and just say I look forward to working with Senator Tester on this committee. We can get a lot done working together, and let us just go out and do it. Thank you.

Senator TESTER. Absolutely. Well, thank you, Senator Johanns.

And I want to welcome the four witnesses to the panel here today. These four folks have spent a lot of time working in this field and I want to thank them for their willingness to take time out of your busy schedule and be here with us this afternoon. I will introduce you all and then we will just go right down the line with the testimony. I would ask you ahead of time, keep your testimony, I think, within 5 minutes. Your entire written document will be a part of the record and that will give us some time to ask the difficult questions.

Commissioner Monica Lindeen is the Montana Commissioner of Securities and Insurance and the State Auditor. As Auditor, she protects securities and insurance consumers through education, fairness, and transparency. During her tenure as State Auditor and Insurance Commissioner, her office has returned more than $200 million to investors and insurance consumers in Montana. Montana is not a particularly big State. This is a big deal. And in November of last year, she was elected Vice President of the National Association of Insurance Commissioners. Just as a side note, I worked with Monica Lindeen when I was in the State Legislature when she was a legislator and I was a legislator. She is the hardest working person that I have ever been around. Thank you very much for being here, Monica.

Mr. Jon A. Jensen serves as government Affairs Committee Chairman of the Independent Insurance Agents and Brokers of America, IIABA. As the President of Correll Insurance Group based in Spartansburg, South Carolina, he is also the South Carolina National Director for the Independent Insurance Agents and Brokers of America and the Past National Chairman of the Big "I" Insurance PAC Board of Trustees. I want to thank you, too, Jon, for taking the time for being here. Welcome to the panel.

Scott Trofholz, who Senator Johanns spoke about, serves as President and Chief Executive Officer of The Harry A. Koch Company located in Omaha, Nebraska. He is also a member of the Board of Directors of the Council of Insurance Agents and Brokers. Before joining The Harry A. Koch Company, he served as Marketing Representative, Service Office Manager, Regional Marketing Manager, and Branch Manager of Crum and Forster, a Xerox subsidiary. I want to thank you for being here, Scott, and very much appreciate your time in making the trek from Omaha.

And last but certainly not least, we have got Baird Webel, a Specialist in Financial Economics with the Congressional Research Service. Mr. Webel has written extensively on financial institution policy, including the insurance industry, and coordinated the CRS report on the Dodd-Frank Act. Before joining CRS, he worked as a Congressional staffer for Representative Cooksey. So I want to thank you for being here, Baird. As I told you when you walked in, you are the first "Baird" I ever met, so it is great to have you on the panel, if for that reason alone.

With that, I want to thank you all once again, and we will start with your testimony, Commissioner Lindeen.

STATEMENT OF MONICA J. LINDEEN, COMMISSIONER OF SECURITIES AND INSURANCE, MONTANA STATE AUDITOR, ON BEHALF OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

Ms. LINDEEN. Chairman Tester, Ranking Member Johanns, and Members of the Committee, thank you for the opportunity to testify this afternoon and for your leadership on the NARAB II legislation.

My name is Monica Lindeen, Montana State Auditor, Commissioner of Insurance and Securities, and Vice President of the NAIC. The NAIC supports the current NARAB legislation before you today, and on March 8, we sent a letter of support to Congress. We also supported the Senate version of the bill in the last Congress.

Insurance producers play a very important consumer resource role in the U.S. insurance system as the regulators of more than 6.8 million individuals and business entities licensed to provide insurance services in the United States. NAIC members recognize that streamlined nonresident producer licensing is an important goal.

However, I want to emphasize that efforts to do so must not undermine existing State authorities to protect insurance consumers and take enforcement action against malfeasant producers. State insurance regulators take our consumer protection responsibilities very seriously, and our support of this legislation is contingent on the preservation of our ability to carry out that mission as we regulate our markets and enforce State insurance laws.

State regulators have broad authority to protect consumers through licensing, data collection, and taking action against violators of State insurance laws. My written testimony details our authorities in that area, but I want to briefly focus today on our enforcement record.

In 2011, State insurance departments received millions of consumer inquiries and more than 283,000 official complaints, leading to many civil and criminal investigations as well as the suspension or revocation of nearly 25,000 licenses and nearly 5,000 fines, totaling over $73 million and resulting in $115 million in restitution for consumers.

Turning to the legislation itself, allow me to offer comments about the road that brought us here today. Insurance commissioners have worked continuously to address nonresident producer licensing reform, starting with the NAIC's Producer Licensing

Working Group in the late 1990s and the NARAB Working Group in the early 2000s. The NAIC developed and adopted a Producer Licensing Model Act to facilitate nonresident licensing and improve reciprocity. States met and exceeded the nonresident reciprocity requirements of the Gramm-Leach-Bliley Act and continue to work diligently toward uniformity in resident licensing standards.

Even with all of our progress, NARAB II would further streamline the administrative process of nonresident licensing, but not at the expense of consumer protection, State revenues or market regulatory authority. Today's bill contains improvements over previous versions, and hopefully, with support from both regulators and producers, it will continue to attract bipartisan cosponsors and votes as it works its way through the process.

The proposed legislation would establish NARAB with a governing board comprised of eight State insurance commissioners and five insurance industry representatives. This strong regulatory majority ensures that consumers' best interests are served by establishing membership criteria, drawing from the highest standards that exist in State law.

In addition to the strong regulator majority on the board, the legislation also preserves the existing authorities of States with respect to resident licensing, market regulation, and consumer protection, and the supervision and enforcement of laws related to producer conduct. The bill also includes important disclosures to the States, maintains business entity licensing, and protects State revenues and fee structures to ensure there is no additional cost or revenue loss to those States.

Another important provision requires pre-notification to State regulators and the NAIC of any producer seeking to do business on the basis of NARAB membership. While the States will no longer issue licenses to nonresidents seeking NARAB membership, the bill requires notice and a 10-day look period during which a State may bring up any objections to a producer that seeks to do business in their jurisdiction.

Last, the bill requires the board to establish a strong ethical conduct code related to the NARAB's affairs and operation and mandates an FBI criminal background check from applicants who have not had one within the last 2 years, further raising the bar in the area of consumer protection.

Taken together, these provisions preserve State regulatory authority to police insurance markets and protect consumers.

In conclusion, we look forward to working with you to advance the NARAB II legislation. The bill is the result of many years of discussions among State regulators, the producer community, and Congress. We cannot stress enough the improvements included in this version of the legislation and agreed to by all involved are absolutely critical to our support while preserving State authority, and our endorsement should not be interpreted as support for any further preemption of State insurance laws. Insurance regulatory reform should always begin and end with the States.

And I thank you for your time this afternoon and look forward to your questions.

Senator TESTER. Thank you, Commissioner Lindeen.

You may proceed, Mr. Jensen.

STATEMENT OF JON A. JENSEN, PRESIDENT, CORRELL INSURANCE GROUP, AND CHAIRMAN, GOVERNMENT AFFAIRS COMMITTEE, ON BEHALF OF THE INDEPENDENT INSURANCE AGENTS AND BROKERS OF AMERICA

Mr. JENSEN. Thank you, Chairman Tester and Ranking Member Johanns. My name is Jon Jensen and I am President of Correll Insurance Group, headquartered in South Carolina. I am also Chairman of the Government Affairs Committee of the Independent Agents and Brokers of America, also known as the Big "I".

The Big "I" strongly supports S. 534, or NARAB II, which was introduced last week by the Chairman and Ranking Member and 12 other bipartisan original cosponsors. This legislation is one of the top priorities for the Big "I" and I thank you both for your leadership on this issue.

Members of the Subcommittee are likely well aware of the Big "I"'s steadfast and unwavering support for State regulation of insurance. We strongly believe that States are the most appropriate and effective regulators of this vital financial sector. However, while the foundation of State regulation remains strong, sufficient progress on producer licensing reform has not been achieved, despite the best effort of State regulators. As a result, there is a critical need for targeted Federal legislation, such as NARAB II.

State law requires insurance agents and brokers to be licensed in every jurisdiction in which they conduct business, which forces most producers today to comply with inconsistent standards and duplicative licensing processes. These requirements are costly, they are burdensome and time consuming, and they hinder the ability of insurance agents and brokers to effectively address the needs of consumers. In fact, the current licensing system is so complex and so confusing for our members that many are forced to retain expensive consultants or vendors or hire staff people dedicated to achieving compliance with the requirements of the States in which they operate.

My own firm maintains hundreds of licenses. I myself am currently licensed in 27 States. Many producers in my agency have more than 20 State licenses, and we have six internal staffers who share responsibility for maintaining and updating these licenses. These are six staff who could otherwise be engaged in client service work, but instead are mired in needless administrative paperwork. The compliance costs associated with maintaining these hundreds of licenses is significant. In addition to agent licenses, my agency must also maintain business licenses in many States where we operate.

In addition to the time and compliance costs associated with the agent and agency licensing, I have also experienced firsthand the real opportunity costs the current system creates. My agency has on numerous occasions missed opportunities for new business solely because we are not licensed in the correct State. At one point, we had a license application delayed for almost 45 days because there was an error in the application, but no one in the insurance department could figure out what that error was. After 45 days, we found out the problem. It really was just simply that we had not capitalized a word. The application was corrected in literally 2 minutes and we are finally allowed to write business in that State.

There is a better way, and that is the NARAB II legislation that you, Mr. Chairman and Ranking Member, have introduced. The NARAB II proposal would immediately establish the National Association of Registered Agents and Brokers and provide a long-awaited vehicle for obtaining the authority to operate on a multi-State basis. NARAB II ensures that any agent, broker, or agency which elects to become a member of NARAB will enjoy the benefits of true licensing reciprocity.

In order to join NARAB, an insurance producer must be licensed in good standing in his or her home State, undergo a recent criminal background check, and satisfy the criteria established by NARAB. This criteria would include standards for personal qualifications, training, and experience. The bill would not allow a race to the bottom to occur, as it instructs the board to consider the highest levels of insurance producer qualifications established under the licensing laws of the States.

NARAB's simple and limited mission would be to serve as a portal or central clearinghouse for insurance producers and agencies who seek the ability to operate in multiple States. NARAB II merely addresses marketplace entry and appropriately leaves regulatory authority in the hands of State officials. In short, the NARAB II proposal would strengthen State insurance regulation, reduce unnecessary redundancies and regulatory costs, and enable the industry to more effectively serve the needs of insurance buyers. And, it would achieve these results without displacing any State regulatory oversight.

I thank the Subcommittee for its efforts on agency licensing reform and look forward to working with you all on S. 534.

Senator TESTER. Thank you, Mr. Jensen, for your testimony.

Please proceed, Mr. Trofholz.

STATEMENT OF SCOTT TROFHOLZ, PRESIDENT AND CEO, THE HARRY A. KOCH COMPANY, OMAHA, NEBRASKA, ON BEHALF OF THE COUNCIL OF INSURANCE AGENTS AND BROKERS

Mr. TROFHOLZ. Good afternoon, Chairman Tester, Ranking Member Johanns, and Members of the Subcommittee. Thanks so much for this opportunity. I am Scott Trofholz, the President and CEO of The Harry Koch Company, which is based in Omaha, Nebraska. From a startup small business almost 100 years ago, we have grown to the largest independent agency in the State of Nebraska, with clients including Fortune 500 companies, small businesses, and everything in between.

I am testifying on behalf of my firm as well as members of the Council of Insurance Agents and Brokers, which represents the Nation's largest insurance agencies and brokerage firms. I am also on the board of the Council.

From our perspective, it is terrific that you are holding this hearing and that S. 534 has been introduced to create the National Association of Registered Agents and Brokers. We think the reform of nonresident producer licensing is an idea whose time has come. Let me put it to you this way. Our organization first formed a task force to work on this issue in 1933.

As for myself, I hold nonresident licenses in 48 jurisdictions. We have over 80 licensed professionals in our firm, and you can do the math and see the administrative cost and the compliance burden this creates. I am constantly filling out paperwork that requires a significant amount of administrative assistance and adds costs to our firm and to our clients' costs. These regulations are quite often redundant and almost always cumbersome.

You would have no compliant from us if these regulations were about assuring a standard of professionalism, but they are not. In addition to the initial licenses, we face annual renewals in all jurisdictions and must comply—and must satisfy all the underlying requirements, such as pre-licensing and continual as well as post-licensure oversight.

As you Senators know very well, there has long been a debate about the parameters of State regulation and Federal oversight. Not all of us on this panel have agreed on this. But on this particular issue, consensus among the major stakeholders has been reached. We all agree that we need a tool such as NARAB to achieve administrative simplicity and uniformity while assuring consumer protection.

I especially want to thank all the State regulators, including Commissioner Lindeen, for all their work on this issue—changing laws and licensing practices in their States, working together at the NAIC to address the issues through model standards and the bully pulpit, and working with all the stakeholders and legislators in developing this important proposal.

Regulatory reform is a difficult process and the regulators take the brunt of a good deal of griping along the way. But we really do appreciate their diligence in protecting consumers and providing a vibrant insurance marketplace.

The idea behind NARAB is pretty simple. It does not create a Federal license but rather would serve as a clearinghouse for nonresident producer licensure. It would be purely optional and self-funding. Not a dime of Federal money would be required. In order to be a member of NARAB, a producer would first have to be duly licensed in his or her home State. The board of NARAB, whose majority would be made up of insurance regulators, would set the criteria of NARAB membership and the standards of professionalism would be at least as high as the most stringent State. When a producer meets that standard, he or she can utilize NARAB as the clearinghouse to receive that nonresident license.

NARAB would submit licensing fees to the States and the States would not lose any revenue. This is truly a win-win scenario. If NARAB is not the most efficient means through which the producers can be licensed, nothing compels a producer to use it. The governance of the organization assures the State regulators will be able to fully protect and, we believe, enhance the quality of individuals engaged in insurance transactions.

As has already been stated, the original NARAB versions in Gramm-Leach-Bliley created an incentive for the States to move toward reciprocity. Reciprocity has smoothed over some of the differences, but unless there is real uniformity in administrative procedures, brokers and insurance consumers will continue to suffer from unnecessary costs.

Again, Mr. Chairman and Senator Johanns, we are grateful for your leadership on this issue and look forward to working with you.

Senator TESTER. Thank you, Mr. Trofholz. I appreciate your testimony, and we will proceed with Mr. Webel.

Mr. Webel.

STATEMENT OF BAIRD WEBEL, SPECIALIST IN FINANCIAL ECONOMICS, CONGRESSIONAL RESEARCH SERVICE

Mr. WEBEL. Hello. Mr. Chairman and Ranking Member Johanns, thank you very much for the opportunity to testify today. My written testimony contains additional detail and background on insurance regulation and different Federal attempts to influence insurance regulation. Today, I will focus on NARAB and insurance producer licensing.

Before I begin, I just would like to let everybody know, which I know you know, that CRS's role is to provide objective, nonpartisan research and analysis for Congress and we do not take positions on particular legislation.

As everyone has stated, the States are the primary regulators of insurance. This leads to some multiplicity of regulation across State jurisdictions, almost inevitably so. There have been attempts to unify or harmonize State regulation by both the insurance regulators and the insurance legislators at the State level for many, many years. But despite such efforts, we hear stories as we have heard from the rest of the panel about the costs and inefficiencies in various parts of the insurance regulatory system.

The attempts that have been brought before Congress to address this have largely been in the realm of either a complete Federalization of the system or some Federal, shall we say, help for other bodies in the insurance regulatory system to achieve this uniformity. Although I would say, if I were writing this, the word "help" might be in quotation marks, because not everyone in the system has welcomed such help.

The NARAB provisions, as mentioned, were originally part of the Gramm-Leach-Bliley Act. They provided for the creation of a NARAB Association, which would allow people to operate across State lines with a single membership in this Association. But, as we have heard, there continue to be problems, partly because the NARAB Association in Gramm-Leach-Bliley was not mandatory. The States were given the opportunity to institute either reciprocity or some sort of uniformity in the system, which they did, and the NAIC certified that as many as 47 different jurisdictions reached the reciprocity standards. But I think that, again, as the details that have been given, there are some issues that have come up with it and we have continued to hear problems from people despite the reciprocity legislation that is in place.

I think that the problems that one continues to hear, despite the reciprocity legislation that is in place, leads to the conclusion as we consider further legislation that the details of the legislation really do matter, that there can be little details—little differences between States can add up to big differences to the producer licensing experience.

The NARAB II legislation that is before the Congress today basically does away with the conditionality that was found in NARAB I, and institutes the NARAB structure immediately. It has changes to the board structure that was originally in the NARAB I legislation. It has changes, to some degree, to the oversight that the NAIC would have on the NARAB organization. But the organization remains deeply embedded in the State regulatory system, with a majority of the board being insurance commissioners.

Another part that has been added since NARAB I are provisions providing for Federal Attorney General and FBI assistance or authority in background checks, which has been a point of contention or point of difficulty with some States in terms of accessing, I believe, the Federal resources on criminal background checks.

I think that another lesson that can perhaps be learned in the 15 years or so since the Gramm-Leach-Bliley is also that continued oversight by Congress matters. I think anyone that has been on Capitol Hill for a while knows that when a law is passed instructing the executive branch to do something, it really helps when Congress keeps their thumb on the executive to make sure that it happens. That is in a situation where Congress frequently has budgetary oversight or much more direct oversight mechanisms on the body that is undertaking the authority.

In this case, it becomes a private body that is sanctioned by Congress, and I think that that brings up challenges as to how does Congress continue to oversee what it has created. And I find it very interesting that one of the initial NARAB legislation—NARAB II legislations—included reports directly to Congress. But the administration basically objected to the reporting because it was a reporting to both the executive and to Congress. The newer legislation does not have the reporting to Congress and I think that is in response to those concerns, but that may be something that Congress will want to think about again as to how it is going to oversee the NARAB organization going forward.

If you have any further questions, I would be happy to answer them.

Senator TESTER. Well, thank you, Mr. Webel. I appreciate your testimony as well as everybody else's.

Since it is just the Ranking Member and myself, I do not know that we are going to put the clock on. I am going to ask a few questions and kick it over to you, and when you get tired, you can kick it back.

I want to start by once again thanking you for all the work that each and every one of you have done on this. Your respective organizations have been very positive in the efforts to streamline the State insurance licensing process and you need to take that back to not only yourselves, but anybody in your organization that it applies to. Without your work, I think it is fair to say that Senator Johanns and myself would not have been able to introduce this bill. So thank you for that.

I want to talk a little bit about consumer impact, consumer protection as it relates to NARAB. Can each of you discuss from your perspective the potential impact of the streamlined licensing process as conceived through the NARAB on consumers, positive or negative. We will start with you, Commissioner.

Ms. LINDEEN. Thank you, Mr. Chairman, Senator. I would just—I would start out by saying that, once again, State regulators really do take protecting consumers very seriously. It is our number one priority, as I am sure you have heard before. And our support of this legislation really is contingent on that preservation of that ability to protect consumers and making sure that we are regulating our markets and enforcing State insurance laws, as I said.

The legislation appropriately, we believe, leaves regulatory authority in the hands of State officials, which does nothing, then, to limit our ability to protect consumers by upholding those laws in our home States. So I think that is probably the number one reason why we think that this bill as it stands is a good piece of legislation.

I would also note that, in some cases, NARAB producer membership requirements may be even tougher, may provide for even tougher regulations, which I think Mr. Webel mentioned, when it comes to fingerprinting and FBI background checks. We think that that is important, as well. Obviously, right now, there is only about half the States that actually require that.

And, finally, I would just say that any time you can have multiple sets of eyes on something when it comes to regulation, it is a good thing. So we think that this is a good bill as it stands for consumer protection.

Senator TESTER. Good. Mr. Jensen, do you have anything to add?

Mr. JENSEN. Yes. Thank you, Mr. Chairman. I do find it interesting this morning, as I was preparing for this hearing, I did get an email from a fellow agent of mine and he said, "Make sure that you mention that this is not just a pro-agent bill. This is absolutely pro-consumer." He said, "The quicker that I can go to market for one of my clients, the better I serve my client." And I think that is a very appropriate comment on his part.

I know from my own personal standpoint, when I have a client that is a small businessman who calls me and tells me how excited he is to be venturing into another State and expanding his business and I have to say, wait a minute, slow down. Do not be so excited. We do not have a license there. It will take us a day or two, or a week, or 45 days to be able to facilitate that for you. It is a very dampening effect, I think, on small business. There is no question about it. And so I think this is, by far, a very pro-consumer piece of legislation.

Senator TESTER. OK. Scott.

Mr. TROFHOLZ. I agree with everything that has been said so far. Any time we can have uniformity and less administrative headache and get things to the market quicker, the end is that the consumer benefits, and that is what we are all trying to do in the first place.

Senator TESTER. OK. Baird, anything that——

Mr. WEBEL. Yes. As written, and I think as people are intending to carry it out, that it would result in increased competition and increased competition is generally good for the consumer.

Senator TESTER. OK. Good.

Commissioner Lindeen, to you specifically, can you comment on how NARAB would impact your ability and the ability of your fellow commissioners to protect consumers, and if that answer is it would have no impact, that is a good enough answer for me, but if it would have an impact, I would like to know.

Ms. LINDEEN. Senator Tester, I would say that it would have no negative effect on our ability to protect consumers.

Senator TESTER. Very good. I am going to kick it over to you, Senator Johanns.

Senator JOHANNS. Let me start with Scott, if I could. I used this example of a person who maybe lives in Iowa, but you service their business and they have various interests in other States. Is that a common occurrence? Is that something you deal with on a regular basis?

Mr. TROFHOLZ. Absolutely. The world is getting smaller, and in many cases, you are taking an example of a personal insurance policy, but businesses do business across multi States. And so, as I mentioned to you, we have over 650 licenses in our small firm and it is just—it is not so much the process, it is which State requires what. I mean, it is the—we just would like to have one place to go to get that all done and it would speed up the process. And again, as we talked about, the redundancies would come out of this, which should be better for the consumer in the end. But that happens all the time.

Senator JOHANNS. Mm-hmm. Jon, do you have thoughts on that?

Mr. JENSEN. Yes. I absolutely concur, and it is even—it is very difficult for us, because the States may change their regulations from year to year. So we think we have a grasp of it and know what we are doing and then discover some change has occurred and all of a sudden it is back to the drawing board. I guess as small business owners and professionals, we find that very frustrating, to think we do not know that what we are doing is absolutely proper.

Senator JOHANNS. Commissioner, on the issue of, let us just take a typical consumer complaint. Let us say that you have a—the law passes. You have an agent in another State other than your own State, but they are doing business in your State. They have lawfully complied and you have a constituent in Montana who feels that they have been cheated or something. Do you then have jurisdiction of that complaint? Is that how that would work, because that activity occurred in your State?

Ms. LINDEEN. Senator, I would definitely be able to continue to investigate the consumer complaint, and if I found that there was any issue with a law being broken, I would be able to then deal with the producer in the appropriate manner, absolutely.

Senator JOHANNS. If I could jump over to Baird, what about this legislation do you think has a better chance of working than previous attempts, because there have been some previous attempts to try to streamline or reciprocity to try to deal with this issue. What makes this better and different, hopefully?

Mr. WEBEL. I think that the existence of the organization, the ability to have the single license is an important aspect. I think that it has the potential to really streamline things. But, as I said, a lot really depends on how things are carried out.

I will go back to a law passed in 1981 and 1986 on risk retention groups that was supposed to provide, essentially, home State regulation of a risk retention group which would then operate across the country. If you listen to the risk retention group associations now, they will complain about the various barriers that have been put up by States which they see as not giving them access across the country.

So I think that, as I said, the details and the ongoing implementation of it really matters in terms of are there little things that are done to prevent people from truly operating across the country and who decides? Does it take a Federal lawsuit? If a producer feels like they should be able to operate in another State, but somehow is not being able to do so underneath the law, do they actually have to file a lawsuit in Federal court to obtain some kind of judgment that they should be able to do so? There are a lot of barriers that can come up after legislation is actually written.

Senator JOHANNS. Sure. Any of the other panelists have any thoughts about that? We not only want to pass the legislation, but we would like to look out there 5 years, 10 years, and say, you know, this was the key. This was the secret and now we can see all this benefit that is occurring.

Commissioner.

Ms. LINDEEN. If I could, Senator, if I could, I would like to just step back for one moment and just kind of remind everybody that after passage of the Gramm-Leach-Bliley Act, I mean, there were these standards set in place and the States were asked—they said that States, at least 27, 28, 29 States had to meet those standards. The States worked very hard to meet those standards and exceeded what the Act asked for. We had, as was mentioned, I think, earlier in one of the testimonies, we had 47 States who were meeting those standards.

So we have come a long way, and I think that a lot of times, these things just do not happen overnight. I think that it is very important that the devil is in the details. Once NARAB is created and we have that governing board, we are going to have 2 years to be able to work out the details, and I think that we have got a lot of history and knowledge in terms of what needs to be done to make sure that this works appropriately and that the process is more effective and more efficient for everyone involved.

Senator JOHANNS. OK. Scott or Jon, do you have thoughts?

Mr. TROFHOLZ. Yes. We were part of the authorship of NARAB I, and after seeing what some of the things that we needed to improve upon that were done, that is where we came up with NARAB II and helped cosponsor this and we think we have worked a lot of those, if I can use the term, "bugs" out of the system to make this more uniform and less costly from an administrative standpoint.

Senator JOHANNS. Mm-hmm. Jon.

Mr. JENSEN. Yes, Senator. I would say one critical difference, that this actually does create NARAB. In 1999, it was only a threat as such.

Senator JOHANNS. Right. It was, if you do not do this, then you might get whatever.

Mr. JENSEN. Correct. And this actually creates the vehicle.

Senator JOHANNS. Mm-hmm. I would think insurance agents across the country would be desperately clamoring for this. I cannot imagine—because it would seem to me so common, like in a city like Omaha, because you are right on the border, you are going to have business from other jurisdictions around you. This would be, it would seem to me—it would seem like virtually every client who walked in would have these complexities where you have got to make sure your licenses are current, *et cetera*. So it would seem to me that the insurance industry would absolutely demand that this would be implemented. Am I seeing that right?

Mr. JENSEN. Absolutely.

Mr. TROFHOLZ. Absolutely. Since 1933, we have been trying to do this correctly, so we are hoping we can push this one across the finish line.

Mr. JENSEN. The burden is greater than you can imagine inside our own walls. It is tremendous. And as Scott mentioned, small business is expanding out. It is not just in personal lines. It is in those businesses seeking economic growth outside of their own neighborhoods.

Senator JOHANNS. OK. I will kick it back to you, Jon.

Senator TESTER. Thank you.

It has only been 80 years. What the heck. Government works deliberately, I guess. That is code for slow.

[Laughter.]

Senator TESTER. Commissioner Lindeen, in your testimony, you highlight a careful balance the NARAB establishes between the board and the State insurance regulators. Can you highlight exactly how the NARAB Board would work in coordination with offices like yours to transmit membership decisions, fees, complaints to individual States.

Ms. LINDEEN. Senator, thank you for the question. Obviously, once the board is in place and they have set their rules and processes and they would be—if they have a producer—I am just going to give you an example. If they have a producer who has somehow or another broken one of those rules that was set by NARAB, obviously, they are going to have an issue and take care of that with the producer. But they will make sure that they pass that information down to us. Are there other specific examples that you can think of?

There is going to be a lot of coordination. Obviously, we have a lot of producer licensing databases that are in place already that the NAIC and the industry take advantage of in terms of tracking producer licensing, tracking any complaints, any violations, fines that have occurred. And I think that there definitely will be an ability for the board to continue to have access to that information and also have the ability to contract with an outside organization to do that, as well.

Senator TESTER. OK. So you feel confident that the legislation is complete enough that the lines of responsibility are clear?

Ms. LINDEEN. Senator——

Senator TESTER. Between the board and the commissioners' offices?

Ms. LINDEEN. Senator, I believe that the legislation is clear enough in terms of setting the parameters in an appropriate manner——

Senator TESTER. OK.

Ms. LINDEEN.——with the appropriate amount of regulators on the board giving us the authority we need. Yes, sir, I do.

Senator TESTER. OK. Both Mr. Jensen and Mr. Trofholz talked about 48 licenses, 27 licenses in different States, anywhere from six to 80 compliance officers on those. Have you been able to quantify in terms of time or money the cost which the current system ends up costing consumers because of the added administration when you have to be registered in 27 States or 48 States or whatever it might be?

Mr. TROFHOLZ. That is—Senator, that is difficult. Chairman, it is difficult for us to come up with a number. We can tell you internally what it costs us to process that, and I would assume a good share of that would go back into the consumer because we would be much more efficient. You know, that varies by agency. But we have one person that spends 2 days a month doing this kind of stuff.

Senator TESTER. OK.

Mr. TROFHOLZ. That is a rough estimate, and that does not include all the other things, the renewal, the State license, the continuing education, all the things that go along with that.

Senator TESTER. OK.

Mr. JENSEN. We know inside our office that it costs us tens of thousands of dollars. But to tell you, Senator, what it costs the consumer is hard to say.

Senator TESTER. Yes.

Mr. JENSEN. It is hard to quantify. It is a matter of quicker to the market, better for the consumer.

Senator TESTER. I got you. There are people from soup to nuts that work in the insurance industry as far as size goes. Could you talk about the impacts of NARAB as it applies—I am talking to Jon and Scott again—as it applies to market competition and what the impact would be, if any, on smaller producers and their ability to compete.

Mr. JENSEN. I think, personally, that the smaller producers are probably—have a greater benefit by NARAB. Organizations such as Scott and myself that have a little more size to them have resources inside the walls that can handle these things, whereas a smaller agent that may have four or five employees has no way of really being able to deal with the various regulatory climates in the various States. They do not have the internal resources to be able to do that, and in many cases, they are just having to walk away from pieces of business that they may be able to produce because they cannot handle it. They cannot serve their client in the best way they need to, so they must pass it on to someone else who has better resources.

Mr. TROFHOLZ. That is the same answer.

Senator TESTER. OK.

Mr. TROFHOLZ. I agree with Jon 100 percent on that.

Senator TESTER. All right. Baird, you talked a little bit about—and do not let me put words in your mouth, OK? You talked about the background checks, and if I heard you right, that there could be a problem accessing the Federal database.

Mr. WEBEL. When you review the kinds of things that people have said in the past 10, 15 years, I believe there have been issues with the State regulators having some question as what they can access in terms of the Federal databases and whether they can get complete information or not. And so I think that the sections in the bill now, I believe were put in specifically because of those sorts of problems——

Senator TESTER. To be able to enable that?

Mr. WEBEL. Yes.

Senator TESTER. You talked about the board change. You talked about the conditionality. Was there anything else in this bill that was changed that you saw that might help with its passage? It is a very similar question to the one Senator Johanns raised.

Mr. WEBEL. From the original one, or——

Senator TESTER. Yes. From NARAB, the first one.

Mr. WEBEL. The actual implementation rather than conditionality is the biggest thing.

Senator TESTER. OK.

Mr. WEBEL. I think that the fact that it continues to be very deeply entwined in the State regulatory system, the bill is not a Federal takeover of the system, this seems to be something that Congress has hesitated over before—Federal takeovers of the system—but is willing to sometimes use Federal preemption to make the system more efficient. And so the bill seems to follow in the same vein of the things that have passed in the past.

Senator TESTER. OK. My last question, and actually, it will go to Monica again, on keeping out bad actors. I mean, how—and maybe it goes back to being able to have access to the database. Maybe it is just communication between the different States and ultimately this would help facilitate that. But how would the board ensure the highest professional ethical standards, but more importantly, how would they keep out the bad actors? How do you see that coming down the pike, prevent the bad actors from becoming NARAB members to begin with?

Ms. LINDEEN. Well, Senator, I think that the background checks are an important part of that, making sure that every State in every case is doing those, well, through the NARAB board, that those background checks are occurring. And, obviously, it is also important, then, that the board would have access to all the data that is already out there about individuals through our database systems. So I think that that is the number one, I think, way that that can be accomplished. And, as you say, communication is always important.

But I think that, once again, I just really want to—this is based on some comments that were made—just stress the fact that NARAB is not—would have no regulatory authority. Obviously, this is just a tool to facilitate a process that is still going to continue to preserve State regulators' authorities to protect those consumers.

Senator TESTER. OK. Thank you.

Senator Johanns.

Senator JOHANNS. If I could just follow up on that question, as I understand the legislation, there is a 10-day period——

Ms. LINDEEN. Right.

Senator JOHANNS.——and I am assuming that that 10-day period would be utilized by commissioners to take a look and maybe something pops up. Maybe this person is under investigation in another State for some kind of wrongdoing. You could push back then on that person doing business in your State, right? Explain how that would work.

Ms. LINDEEN. Senator, I appreciate that, and I would have added that to my response to Senator Tester's question, because that is another key element in this piece of legislation, is that each State would be able then to have that 10-day look-back period, and if they had any problems that had occurred in their jurisdiction, they could push back, and hopefully, that would be—that the board then would look at that and say, there is an issue here.

Senator JOHANNS. OK. One thing I would always ask in the Governor's office when people would come to me with a great idea, I would always say, explain to me who is for you and who is against you. Tell me, in this legislation, do you know of any group that would be out there that would, after this hearing, call us and say this is a problem, this is why we do not like this legislation? And, Commissioner, I will start with you.

Ms. LINDEEN. I do not know of any. Honestly, Senator, I think it is a lovefest.

Senator JOHANNS. Good.

[Laughter.]

Senator JOHANNS. We like those once in a while, too, you know.

Ms. LINDEEN. No, but it is not something—it is not a lovefest that came easily, obviously. These are discussions and negotiations that have been occurring for years. And I think that it is—I think we have come to a point now where we can all agree on some specifics in order to move forward, to give industry what they want, which is the ability to have a streamlined process so that they can get their products so that they can do their work for their consumers and that we, as regulators, can do our job, as well, which is to protect consumers. And so I think that it is to a point where we all agree and we need to move forward.

Senator JOHANNS. Jon, Scott, any thoughts on that?

Mr. JENSEN. I completely echo that and we know of no one that would oppose this now.

Senator JOHANNS. Mm-hmm.

Mr. TROFHOLZ. I agree with Jon.

Senator JOHANNS. Yes.

Mr. WEBEL. I am not aware of any specific groups that have expressed opposition. I would note that it is, to some degree, a Federal preemption of some State laws. There will be people out there that may be unhappy about that. And having attended a conference of the National Conference of Insurance Legislators (NCOIL) as a Federal representative, I will tell you that there are insurance legislators in the country that do not trust the Federal Government very much. So I think that you may still hear from some people that are not happy with the legislation.

Senator JOHANNS. Mm-hmm.

Mr. WEBEL. I would just note that that organization, NCOIL, as a whole, has taken a neutral stance on the NARAB II legislation.

Senator JOHANNS. You know, here is what I would offer, and then I have no other questions. But this is a comment I would offer. I do not know that there is anybody in Congress more States' rights oriented than the two people sitting up here today. My entire background was State and local before I came here to join the President's cabinet, entirely. I have said over and over again, I just think regulating closest to the people affected is the best way of doing business.

However, I have seen this issue rattle around and rattle around and rattle around, and it seems to me if there was ever a sweet spot to be achieved, this legislation achieved it through working together and compromise and giving here and giving there, to recognize that the States are the regulators in this area. And I do believe that the legislation respects that. I really do.

The other thing I would say, if this problem is not solved at some point, then I think you have a risk of other legislation at some point in time that turns everything upside down.

Ms. LINDEEN. Yes.

Senator JOHANNS. And to me, that would be extremely worrisome. This legislation has the best chance of solving a very, very difficult problem, in my opinion, and I certainly agree with you. There are people that push back on anything that has a Federal flavor to it. But for the work of many who tried to reach that sweet spot, we would not be here today, and I just think that this is such an important step. Otherwise, other consequences are awaiting us that I do not think we will like nearly as much, because this has been such a problem for so long. Eighty years is long enough, and my hope is we can get this problem solved.

Ms. LINDEEN. We thank you both for your leadership in helping us do that.

Senator JOHANNS. I am done.

Senator TESTER. Well, thank you, Senator Johanns. I very much appreciate those remarks, as I appreciate the remarks of the panel today. I meant it in the beginning when I said, thank you for your time. I know you could all be doing something else and you are not. You are here advocating for this bill, or at least giving us information about this bill. So I want to thank you for that.

This hearing has really underscored the importance of legislation to finally establish the National Association of Registered Agents and Brokers and has highlighted all of the efforts that have occurred up to this point. I certainly look forward to working with Senator Johanns and many of our witnesses today and others in getting this legislation across the finish line.

To that end, I have a few documents that I want to submit into the record. I have a letter of support for NARAB dated February 19 from a broad coalition of insurance industry groups; a letter of support for NARAB dated March 8, 2013, from the leadership of the National Association of Insurance Commissioners; written testimony from the National Association of Professional Surplus Lines Offices; written testimony from the Advocates for Insurance Modernization; written testimony from the American Association of Managing General Agents; and written testimony from the Insured Retirement Institute.

Senator TESTER. The hearing record will remain open for 7 days for any additional comments or for any questions that might be submitted to the record.

With that, thank you all. This hearing is adjourned.

[Whereupon, at 3:58 p.m., the hearing was adjourned.]

[Prepared statements and additional material supplied for the record follow:]

PREPARED STATEMENT OF MONICA J. LINDEEN

COMMISSIONER OF SECURITIES AND INSURANCE, MONTANA STATE AUDITOR
ON BEHALF OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

MARCH 19, 2013

Introduction

Chairman Tester, Ranking Member Johanns, and Members of the Committee, thank you for the opportunity to testify this afternoon, and thank you both for your leadership on the NARAB II legislation, S. 534, which we are here to discuss today.

My name is Monica Lindeen, and I am the Montana State Auditor and Commissioner of Insurance and Securities. I currently serve as Vice-President of the National Association of Insurance Commissioners (NAIC), and I present this written testimony on behalf of that organization. The NAIC is the United States standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 States, the District of Columbia, and five U.S. territories. Through the NAIC, we establish standards and best practices, conduct peer review, and coordinate our regulatory oversight. NAIC members, together with the central resources of the NAIC, form the national system of State-based insurance regulation in the United States.

The NAIC supports S. 534. On March 8, the other NAIC officers and I sent a letter supporting the bill to the Chairmen and Ranking members of the Senate Banking Committee and the House Financial Services Committee. We also supported the Senate version of the bill in the last Congress.

As the regulators of more than 6.8 million individuals and business entities licensed to provide insurance services in the United States, the NAIC recognizes that streamlined nonresident producer licensing is an important goal, but I want to emphasize that efforts to do so must not undermine current State authorities to protect insurance consumers and take enforcement action against malfeasant producers. State insurance regulators take our consumer protection responsibilities very seriously, and our support of this legislation is contingent on the preservation of our ability to carry out that mission as we regulate our markets and enforce State insurance laws.

Policing Insurance Producers and Protecting Consumers

State regulators' top priority is the protection of insurance consumers. We do this in a variety of ways, from licensing and collecting data on insurers and producers to investigating consumer complaints and violations of State insurance laws. We also consistently try to educate consumers regarding their rights and recourses against unscrupulous actors.

Licensing

The State insurance departments have a strong track record regarding the licensing of individuals and business entities through pre-licensure requirements and evaluations and post-licensure consumer protection and market regulation. In addition, State coordination is facilitated through the State Producer Licensing Database maintained by the NAIC.

In order to be licensed, insurance producers must pass an examination by specific line of authority. In addition, many States require pre-licensing education training prior to a candidate taking a producer licensing examination. In addition to the examination process, producer applicants undergo a background check, which includes the fingerprinting of applicants in many States.

Once licensed, most States require an insurance producer to obtain what is known as a company appointment to sell a company's products. States typically require insurance producers to complete 24 hours of continuing education training every 2 years, with three of the 24 hours addressing ethics.

Monitoring and Tracking Producers

State insurance departments monitor the activities of producers licensed in their State as part of their market conduct regulation responsibilities. When producers operate in multiple jurisdictions, departments must coordinate efforts to track producers and prevent violations. Special databases maintained by the NAIC assist States by sharing information about the activities of insurance producers. One such database, the Regulatory Information Retrieval System (RIRS), contains information on producers and companies against which some type of regulatory action has been taken. The Special Activities Database (SAD) contains data on unauthorized activities and disciplinary actions taken by other regulatory agencies other than a State insurance department. Finally, the Complaints Database System (CDS) provides online access to closed complaints.

The NAIC also maintains the State Producer Licensing Database (SPLD), a nationwide comprehensive database of individuals and business entities licensed by States to sell, solicit or negotiate insurance. The SPLD allows States to share information to facilitate the licensing process and track producers licensed in more than one State. Information shared in the Producer Database (PDB), which companies access to conduct due diligence prior to appointing an agent, includes demographic and biographical information, current and historical license information, types of licenses held, authorized lines of business, and a record of insurance regulatory actions (listed in RIRS). Finally, the SPLD links to SAD and CDS databases to provide States a comprehensive regulatory picture of an insurance producer. This information is pushed to the States through the NAIC's Personalized Information Capture System or PICS Alerts. When one State takes a regulatory action against a producer, all States in which the producer holds a license are electronically notified.

With SPLD in place to serve as a cornerstone, the National Insurance Producer Registry (NIPR), a nonprofit affiliate of the NAIC, connects State insurance departments with insurers, producers, licensing service providers, and other stakeholders in the licensing process. Among its many benefits of such a wide-area network, NIPR's state-of-the-art electronic filing system provides efficiencies to the licensing of producers by facilitating the electronic licensing application process; automating the producer appointment and termination process; providing companies access to data contained in the PDB; and streamlining billing and collection of licensing and appointment fees.

Complaints and Enforcement Actions

State regulators have broad statutory authority to regulate and police their markets on behalf of consumers. State insurance departments take in hundreds of thousands of consumer complaints every year that lead to civil or criminal investigations, fines, and restitution for consumers.

While specific processes vary from State to State, in most cases, action begins with a consumer complaint or inquiry. Professional staff at State insurance departments thoroughly review complaints and investigate whether State laws have been violated by either a producer or an insurer. If a State regulator determines a producer has violated State law, remedies include fines, cease and desist orders, and suspension of licenses to keep bad actors from harming consumers. In my own State of Montana, in 2011, we levied 29 fines totaling $125,000, and recovered over $78,000 for consumers through 11 restitutions. For the same year, nationwide, State insurance departments received more than 283,000 official complaints, leading to the suspension or revocation of nearly 25,000 licenses, and nearly 5,000 fines totaling over $73 million and resulting in $115 million in restitution for consumers.

Additionally, many States have formed separate criminal insurance fraud units. These units, which may or may not reside within the State's insurance department, investigate insurance fraud in order to prevent bad actors from harming consumers and to keep fraudulent claims from increasing the cost of insurance. Recent years have seen an increase in the number of fraud investigators employed by the States as awareness and scrutiny of insurance fraud has increased.

Educational Efforts

In addition to monitoring producers and investigating potential producer violations of State insurance laws, State regulators also provide educational materials, comparison guides, seminars, and strive to improve our outreach to help consumers know their rights. Independently and through the NAIC, State regulators issue frequent consumer alerts; we also share information about insurance companies through tools such as our Consumer Information Source (CIS) service, including closed complaints, licensing information, and financial data on producers and insurers. CIS allows consumers to obtain key information before purchasing an insurance policy.

NARAB II—Background

Turning to the legislation itself, allow me to offer comments about the road that brought us here today. As you know, the proposed legislation will amend the Gramm-Leach-Bliley Act to create a nonprofit corporation known as the National Association of Registered Agents and Brokers, or NARAB, in order to streamline nonresident market access for insurance producers licensed in their resident States. NARAB will be led by a Board of Directors, the majority of which will be State insurance commissioners, and the Board will establish membership requirements applicable to eligible nonresident insurance producers. Membership will permit insurance producers to access insurance markets similar to what nonresident producer licensing allows.

Insurance commissioners have worked for a very long time to address nonresident insurance producer licensing reform. Starting with the NAIC's Producer Licensing Working Group in the late 1990s and the NARAB Working Group in the early 2000s, the NAIC developed and adopted a Producer Licensing Model Act (PLMA) to facilitate nonresident licensing and improve reciprocity. States met and exceeded the nonresident reciprocity requirements of the Gramm-Leach-Bliley Act and continued to work diligently toward uniformity in resident licensing standards.

In the mid-to-late 2000s, the NAIC reconstituted its NARAB Working Group in order to update and strengthen our approach to reciprocity. After a considered evaluation of new issues and administrative practices, the NARAB Working Group recommended the NAIC adopt a heightened standard for reciprocity, which was adopted by the NAIC Executive Committee and Plenary in 2009. A subsequent review determined that the States continued to meet and exceed GLBA's reciprocity standard.

Even with all our progress, the NAIC agrees that further improvement is needed. The States have made such significant progress in reforming producer licensing that today's system is unrecognizable from the system of 10–15 years ago. However, the narrow, targeted area of the nonresident insurance producer licensing process is one of the exceptionally rare instances where we believe Federal legislation could be used. NARAB II would streamline the administrative process of nonresident licensing (or its equivalent under NARAB), but not at the expense of consumer protection, State revenues or market regulatory authority.

Specific Provisions of Interest

Today's bill contains improvements over versions introduced in previous Congresses, and hopefully with support from both regulators and producers, it will continue to attract bipartisan co-sponsors and votes as it works its way through the legislative process. I would now like to take a few moments to address some of the provisions in the NARAB II bill that were crucial to winning the support of State regulators.

The proposed legislation would establish NARAB with a 13-member governing board comprised of eight State insurance commissioners and five insurance industry representatives. This strong regulator majority serves to ensure that while the industry has several seats at the table, regulators will be able to ensure that consumers' best interests are served by establishing membership criteria drawing from the highest standards that exist in State law. NARAB will be administering what has been a regulatory function, and so it should be guided by regulators. As a result, the bar will be raised with respect to nonresident producers seeking to access other markets. This will virtually eliminate the risk of a race to the bottom where consumer protection is concerned. In addition to the strong regulator majority on the board, the legislation also preserves the existing authorities of States with respect to resident licensing, market regulation and consumer protection, and the supervision and enforcement of laws related to producer conduct and possible disciplinary actions. These components of our regulatory programs are essential to serving our monitoring function and protecting consumers.

The bill also includes important disclosures to the States, maintains business entity licensing, and protects State revenues and licensing structures to ensure there is no additional cost or revenue loss to the States—something that is critically important. NARAB's administrative costs will be funded through fees paid by producers.

Another important provision from our perspective requires pre-notification to State regulators and the NAIC of any producer seeking to do business on the basis of NARAB membership. Therefore, while the States will no longer issue licenses to nonresidents seeking NARAB membership, the bill requires notice and a 10-day "look" period during which a State may bring up any objections to a producer that seeks to do business in their jurisdiction through that membership.

Lastly, the bill requires the board to establish a strong ethical conduct code related to NARAB's affairs and operation, and mandates an FBI criminal background check from applicants who have not had one within the previous 2 years. The latter requirement further raises the bar in the area of consumer protection.

Taken together, these provisions preserve State regulatory authority to police our markets and to protect insurance consumers while streamlining the licensing process for insurance producers, and help to explain why the NAIC has chosen to support the bill we are discussing today.

Conclusion

We look forward to continuing our consumer protection efforts and working with you to advance the NARAB II legislation. The bill is the result of many years of negotiations and discussions between State regulators, the insurance producer community, and your respective staffs. We cannot stress enough that the improvements included in this version of the legislation, and agreed to by all involved, are absolutely critical to our support. We thank the sponsors and cosponsors for working with us to achieve a good bill that accomplishes the goals of facilitating nonresident licensing and at the same time preserving State authorities. NARAB represents a unique and very narrow case where Federal legislation can be used to streamline a process, while preserving State authority, and should not be interpreted to suggest support for any further preemption of State insurance laws. Insurance regulatory reform should always begin and end with the States.

Thank you again for the opportunity to be here and I look forward to your questions.

PREPARED STATEMENT OF JON A. JENSEN

PRESIDENT, CORRELL INSURANCE GROUP, AND

CHAIRMAN, GOVERNMENT AFFAIRS COMMITTEE

ON BEHALF OF THE INDEPENDENT INSURANCE AGENTS AND BROKERS OF AMERICA

MARCH 19, 2013

Introduction

The Independent Agents and Brokers of America (IIABA) thanks the Committee, and especially Subcommittee Chairman Jon Tester and Ranking Member Mike Johanns, for the opportunity today to testify in support of agent licensing reform. IIABA's support for State insurance regulation is well-known to observers of the insurance industry and to the Members of the Subcommittee, and we continue to confidently believe that States are the most appropriate and effective regulators of this vital financial sector. However, while our support for State regulation remains unwavering, we are just as strongly committed to the pursuit and implementation of regulatory and legislative reforms that address the inefficiencies and unnecessary duplication that continue to hinder its effectiveness. The foundation of State regulation remains strong and offers considerable benefits, but the difficult truth is that sufficient progress on producer licensing reform and similar marketplace access issues has not been achieved. The need for effective licensing reform is greater than ever.

Producer Licensing Reform and the Need for NARAB II

State law requires insurance agents and brokers to be licensed in every jurisdiction in which they conduct business, which forces most producers today to comply with inconsistent standards and duplicative licensing processes. These requirements are costly, burdensome and time consuming, and they hinder the ability of insurance agents and brokers to effectively address the needs of consumers. In fact, the current licensing system is so complex and confusing for our members that many are forced to retain expensive consultants or vendors or hire staff people dedicated to achieving compliance with the requirements of the States in which they operate.

Some observers mistakenly believe that most insurance agents operate only within the borders of the State in which they are physically located and that the problems associated with the current licensing system only affect the Nation's largest insurance providers. The marketplace, however, has changed considerably in recent decades. There are certainly agencies that have elected to remain small and perhaps only service the needs of clients in one or two States, but that is no longer the norm. My firm spends tens of thousands of dollars per year on licensing fees alone, but the more significant cost for us is the immeasurable staff time that goes into maintaining hundreds licenses and responding to the duplicative State requirements and document requests. For smaller businesses, which lack the staff and resources of larger competitors, the exorbitant cost and unnecessary complexity of ongoing licensing compliance is especially burdensome. Research conducted by IIABA has found the following:

- Approximately 60 percent of IIABA member businesses have a staffer whose duties are dedicated to obtaining and maintain the appropriate insurance licenses for the agency and its personnel. On average (across all agencies surveyed), insurance agencies have one full-time equivalent employee dedicated to such activities.
- About 3 percent of insurance agency operating expenses, on average, are spent on licensing compliance efforts. This percentage is highest for the smallest agencies (4.3 percent).

The inefficiencies, unwarranted expenses, and redundancy associated with the existing licensing system are further exacerbated because many insurance agents serve the needs of consumers and business located in other jurisdictions. Both society and the insurance marketplace have changed considerably in recent decades, and it is incredibly common for insurance agencies to work with customers in other States. IIABA's largest members today operate in all 50 States, and it is increasingly common for small and mid-sized agencies to be licensed in 25–50 jurisdictions as well. In fact, research conducted by our association has found that producers who operate in more than one State are licensed in an average of nine jurisdictions.

Lack of True Reciprocity

Perhaps the most significant deficiency with the current licensing mechanism is the inability of States—despite their best efforts—to fully implement true licensing reciprocity.

Congress recognized the need to reform the multi-State licensing system in 1999, when it incorporated the original NARAB subtitle into the Gramm-Leach-Bliley Act (GLBA). GLBA did not provide for the immediate establishment of the National Association of Registered Agents and Brokers and instead included a series of "act or else" provisions that encouraged the States to simplify the licensing process. In order to forestall the creation of NARAB, at least a majority of States (interpreted to be 29 jurisdictions) were required to license nonresidents on a reciprocal basis. To be deemed "NARAB compliant," GLBA mandated that States issue a nonresident license to any applicant who meets three simple criteria: (1) is licensed in good standing in his/her home State, (2) submits the appropriate application, and (3) pays the required fee. The Act is precise and States that a nonresident license must be issued "without satisfying any additional requirements." In short, GLBA required compliant States to accept the licensing process of a producer's home State as adequate and complete, and no additional paperwork requests or other requirements are permitted (no matter how trivial or important they may seem).

Unfortunately, true reciprocity remains elusive. Agents and brokers hoped meaningful and tangible reform was imminent following GLBA's passage and the subsequent enactment of at least elements of the Producer Licensing Model Act (PLMA) by most jurisdictions, but insurance producers still await the promised benefits a dozen years later. Producers expected the implementation of something analogous to a driver's license-type system, which might allow nonresidents to easily and efficiently operate in multiple States after qualifying for licensure at home. Congress's action in the late 1990s spurred some activity and modest State-level improvements, but insurance producers have been largely disappointed by the lack of meaningful progress made in recent years.

States too often ignore the principle of reciprocity and opt instead to reevaluate and second-guess the licensing decisions of a person's resident State. Although the GLBA and the PLMA clearly establish the limits of what may be required of a nonresident applicant—*a nonresident in good standing in his/her home State shall receive a license if the proper application or notice is submitted and the fees are paid*—States continue to impose additional conditions and fail to respect the licensing determinations made by resident regulators. The imposition of these extra requirements (such as the submission of documents and other information that have already been provided to the home State regulator) makes it impossible for many insurance producers to quickly obtain and efficiently maintain the necessary licenses and violates the reciprocity standards established in Federal and State law.

The Gramm-Leach-Bliley Act empowers the National Association of Insurance Commissioners (NAIC) to determine whether States have achieved and maintain compliance with the requirements of the NARAB reciprocity standard. The NAIC has previously asserted that nearly every State has satisfied the standard, yet the suggestion that so many jurisdictions recognize nonresidents on a truly reciprocal basis would surprise the practitioners who must regularly comply with the extra hurdles and requirements imposed by States.

Duplicative Layers of Licensing Requirements

While most observers are aware that insurance agents and brokers must obtain a license in every State in which they operate, fewer recognize that nonresidents often confront three layers of duplicative and redundant licensing requirements in each jurisdiction. Specifically, many insurance departments require nonresidents to (1) obtain an individual insurance license, (2) obtain a similar license for the applicant's agency, and (3) register as a foreign corporation with the Secretary of State, even when the State's corporate statutes impose no such mandate. These multiple layers of licensure offer no additional benefit or protection to consumers, yet they impose considerable costs, delays, and unintended consequences on the agent and broker community. The effects of these requirements are considerable for insurance producers who operate in multiple States, and the enforcement of many of these rules violates the principle of reciprocity and the GLBA/NARAB standard. Addressing these problems would produce significant benefits and enable insurance firms to focus greater resources on serving the needs of consumers.

The NARAB II Proposal

IIABA believes the most efficient, effective, and sensible way to address the licensing and marketplace access problems discussed above is through targeted legislation at the Federal level. Limited Federal legislation can effectively remedy identified deficiencies in the current system, establish greater interstate consistency in key areas, and preserve day-to-day regulation in the hands of State officials. This pragmatic and politically feasible approach can be used on a compartmentalized issue-by-issue basis to address acknowledged problems and to establish uniformity and interstate consistency where necessary.

Our experience in recent years suggests that there are certain problems with the State regulatory system that are resistant to reform via the traditional path of model laws and State-by-State legislative action. Targeted Federal legislation can overcome the structural impediments, collective action challenges, and other practical and political barriers that have stalled previous reform efforts. There are only a finite number of areas where uniformity and consistency are essential, and Congress has the ability to address each of these issues on a national basis. This can be done through a single legislative act or a series of bills and can be achieved without dismantling, replacing, or impairing the State-based system. State regulators do a tremendous job protecting consumers and ensuring the solvency of insurers, and nothing should be done to undermine or jeopardize their ability to do so on a prospective basis.

IIABA specifically supports the use of this approach to address the licensing problems identified above, and the most appropriate and practical way to do so is through the NARAB II legislation, which has twice passed the House of Representatives. This legislation, S. 534, has once again been introduced in this Congress by Subcommittee Chairman Jon Tester and Ranking Member Mike Johanns. Companion legislation (H.R. 1155) has been introduced in the House of Representatives by Insurance Subcommittee Chairman Randy Neugebauer and Rep. David Scott. The NARAB II proposal would, as the NAIC has previously stated, “achieve the goal of nonresident reciprocity in insurance producer licensing” and “work in partnership with existing State licensing operations.” The measure has enjoyed broad industry support, and nearly the entire insurance industry has endorsed the legislation. The NAIC, too, has fully endorsed S. 534. Finally, the legislation enjoys strong bipartisan Congressional support, and in fact it already enjoys the support of 14 bipartisan original cosponsors in the Senate and 41 in the House.

The NARAB II proposal would immediately establish the National Association of Registered Agents and Brokers and provide agents and brokers with a long-awaited vehicle for obtaining the authority to operate on a multistate basis. It would eliminate barriers faced by agents who operate in multiple States, establish licensing reciprocity, and create a one-stop facility for those who require nonresident licenses. The bipartisan proposal benefits policyholders by increasing marketplace competition and consumer choice and by enabling insurance producers to more quickly and responsively serve the needs of consumers. S. 534 ensures that any agent or broker who elects to become a member of NARAB will enjoy the benefits of true licensing reciprocity. In order to join NARAB, however, an insurance producer must be licensed in good standing in his/her home State, undergo a recent criminal background check (long a priority of State insurance regulators), and satisfy the criteria established by NARAB. These criteria would include standards for personal qualifications, training, and experience, and—in order to discourage forum shopping and prevent a race to the bottom—the bill instructs the board to “consider the highest levels of insurance producer qualifications established under the licensing laws of the States.”

NARAB’s simple and limited mission would be to serve as a portal or central clearinghouse for insurance producers and agencies who seek the regulatory authority to operate in multiple States. The bill discretely utilizes targeted congressional action to produce efficiencies and is deferential to States’ rights at the same time. S. 534 merely addresses marketplace entry and appropriately leaves regulatory authority in the hands of State officials. The proposal does nothing to limit or restrict the ability of State regulators to enforce State marketplace and consumer protection laws. State officials will continue to be responsible for regulating the conduct of producers and will, for example, investigate complaints and take enforcement and disciplinary action against any agent or broker who violates the law. In short, the

NARAB II proposal would strengthen State insurance regulation, reduce unnecessary redundancies and regulatory costs, and enable the industry to more effectively serve the needs of insurance buyers—and it would achieve these results without displacing or adversely affecting State regulatory oversight.

Conclusion

The IIABA thanks the Subcommittee for its efforts—past and present—to implement tangible and effective insurance marketplace improvements. We appreciate today's hearing on "Streamlining Regulation, Improving Consumer Protection and Increasing Competition in Insurance Markets" and we look forward to working with you on passage of the NARAB II proposal.

PREPARED STATEMENT OF SCOTT TROFHOLZ

PRESIDENT AND CEO, THE HARRY A. KOCH COMPANY

ON BEHALF OF THE COUNCIL OF INSURANCE AGENTS AND BROKERS

MARCH 19, 2013

Chairman Tester and Members of the Subcommittee, thank you for the opportunity to testify before you today in support of The National Association of Registered Agents and Brokers Reform Act. My name is Scott Trofholz. I am the President and CEO of The Harry A. Koch Company, based in Omaha, Nebraska. I personally have been with The Koch Co. for 22 years. We are a profitable and growing 96-year-old firm offering consulting and insurance solutions for businesses and individuals with exposures throughout country. Koch clients include Fortune 500 Companies, small businesses and everything in between. We offer commercial lines, employee benefits, bonds and personal insurance. We are the largest family owned agency in Nebraska and employee around 100 residents. My testimony today is on behalf of my firm, as well as the member firms of the Council of Insurance Agents and Brokers (The Council). I'm a member of the Board of Directors of The Council, which represents the Nation's leading, most productive and most profitable commercial agencies and brokerage firms. Council members specialize in a wide range of insurance products and risk management services for business, industry, government, and the public. Operating both nationally and internationally, Council members conduct business in more than 3,000 locations, employ more than 120,000 people, and annually place approximately 80 percent—well over $250 billion—of all U.S. insurance products and services protecting business, industry, government and the public at-large, and they administer billions of dollars in employee benefits. Since 1913, The Council has worked in the best interests of its members like myself, securing innovative solutions and creating new market opportunities at home and abroad.

Creating an effective and efficient insurance regulatory system in the United States is important not only to insurance brokers and the industry in general, but to policyholders and the economy as a whole. Agent and broker licensing is a critical piece of the insurance regulatory scheme.

Nonresident insurance agent and broker ("producer") licensing is a growing bureaucratic issue for me and my colleagues. For example, I currently hold nonresident licenses in 48 jurisdictions. Our agency has approximately 88 licensed individuals, 35 of whom are licensed in multiple jurisdictions, who hold a total of 630 licenses across the country. Besides the licensed individuals, the agency is also licensed as a nonresident in 49 States and holds a resident license in our home State. For an agency of 103 staff members, we have a dedicated person who is responsible for all licensing compliance. The time spent on renewals and new license applications is considerable due to the fact there are certain States that require additional requirements, besides the license application or renewal fees. These additional requirements must be submitted to the State before the license can be issued. These items include (but are not limited to) criminal background checks, proof of citizenship, and fingerprints. These additional compliance requirements create more costs to the agency, take time away from the producers, and make the licensing process more unwieldy. I'm constantly facing paperwork to try to stay on top of the multitude of regulations that are quite often redundant and almost always cumbersome. As for our trade association, my predecessors on our Board of Directors formed a task force to work on the growing problems of nonresident producer licensure—*in 1933*.

Although insurance agent and broker licensing processes have improved over the last decade and a half—due to the enactment of the NARAB provisions of the

Gramm-Leach-Bliley Act (GLBA)[1] and the reforms put in place by the States since that time—there remain redundancies, inefficiencies and inconsistencies across the States that result in unnecessary costs on insurance producers and consumers due to the regulatory and administrative burdens the requirements impose. This is why The Council supports adoption of The National Association of Registered Agents and Brokers Reform Act of 2013 ("NARAB II"), and the creation of NARAB. We are especially grateful to you, Mr. Chairman, and Sen. Johanns, for your willingness to lead on this issue through the introduction of S. 534 (and the 12 bipartisan other sponsors in the Senate) and we look forward to working with all of the members of this Committee to see this effort through.

We believe that creation of NARAB is the best means through which we can achieve comprehensive producer licensing reform. NARAB II creates a national "passport" for such licensure. Insurance producers licensed in their home States can obtain nonresident licenses for any and all other States through the NARAB licensing clearinghouse. It is optional for agents—so an agent can choose to go through NARAB or directly through the States. Moreover, NARAB would not replace or displace State insurance regulation. Indeed, the legislation takes great pains to ensure that there is no question regarding State authority, and clarifies the State's continuing role in the licensure process through the notice period and regulator participation in NARAB, as well as incorporation of the highest State standards in NARAB's licensing requirements.

In my testimony today, I will provide you with an overview of the difficulties faced by Council members in their daily efforts to comply with the current State licensing requirements, as well as a brief discussion of the proposed legislation. First, however, I would like to thank the State insurance regulators, including Commissioner Lindeen, Montana's Insurance Commissioner and the NAIC's Vice President, for all their work on this issue: changing laws and licensing practices in their States; working together at the NAIC to address the issue through models, standards, FAQs and the bully pulpit; and working with all the stakeholders in developing this important proposal. The regulators are to be commended for working in good faith to develop a NARAB proposal that will work for everyone—consumers, insurance producers, and regulators. Regulatory reform is a difficult process, and the regulators have been the brunt of a good deal of griping along the way, but we really do appreciate their hard work, diligence, and patience, and look forward to continuing to work with them as the process continues.

State Insurance Agent and Broker Licensing Today

GLBA's NARAB provisions required that a majority of the 56 U.S. insurance regulatory jurisdictions[2] enact either uniform agent and broker licensure laws or reciprocal laws permitting an agent or broker licensed in one State to be licensed in all other reciprocal jurisdictions simply by demonstrating proof of licensure and submitting the requisite licensing fee.

After enactment of GLBA, the State insurance regulators, through the NAIC, chose to pursue enactment of reciprocal licensing requirements, and pledged to ultimately exceed reciprocity by establishing uniform producer licensing requirements in all the States. The regulators amended the NAIC's Producer Licensing Model Act (PLMA) to meet the NARAB reciprocity provisions, and most of the States followed by enacting some sort of licensing reforms. In 2002, the NAIC officially certified that a majority of the 56 U.S. insurance regulatory jurisdictions met the NARAB reciprocity requirements, thereby averting creation of NARAB.[3] In 2010, the NAIC recently undertook a recertification review and determined that 40 jurisdictions (39 States and the District of Columbia) are currently reciprocal for producer licensing purposes.[4] Seven States that had previously been certified as reciprocal are no longer so.

Even among the States deemed reciprocal, however, administrative inefficiencies and inconsistencies remain that affect every insurer, every producer and every insurance consumer. In a study scheduled to be released this spring, the Foundation

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[1] Pub. L. No. 106–102, 113 Stat. 1338 (1999).

[2] The 56 jurisdictions are the 50 States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, Samoa and the Virgin Islands.

[3] NAIC NARAB (EX) Working Group Report: Certification of States for Producer Licensing Reciprocity Adopted Aug. 8, 2002; NAIC Certification of States for Producer Licensing Reciprocity, Sept. 10, 2002.

[4] NAIC NARAB (EX) Working Group, First Supplement to the "Report of the NARAB Working Group: Recommendations of States Continuing to Meet Reciprocity Requirements of the Gramm-Leach-Bliley Act," Sept. 2011, available at *http://www.naic.org/committees_ex_pltf_narabwg.htm.*

for Agency Management Excellence (FAME)[5] has compiled extensive data on State licensing laws and regulations, as well as implementation of those laws and rules. Despite similar requirements in many of the States, the research shows that differences and inconsistencies abound—whether its business entity lines of authority (required in approximately 30 States, but not required in the rest); pre-licensing education requirements (some States require no pre-licensing education, the rest require between 20 and 200 hours of education); producer appointments (some States require individuals to be appointed with carriers, some require agencies to be appointed, some require both, some require renewals, some are perpetual, *etc.*); and numerous other requirements. While these may seem like small issues, they can easily turn into large problem for entities with insurance producers licensed as residents in multiple jurisdictions: they must constantly renew licenses throughout the year, based upon the individual requirements in each State.

Reciprocity has helped smooth over some of these differences, but unless there is real uniformity in administrative procedures as well as statutory requirements, brokers—and insurance consumers—will continue to suffer from unnecessary costs.

Almost all of the member firms of our association, like our own, continue to hold hundreds of resident and nonresident licenses across the country. For some, the number of licenses has actually increased since enactment of GLBA. One Council member, for instance, has approximately 5,000 licensed individuals, 3,100 of whom are licensed in multiple jurisdictions, who hold 76,100 licenses across the country. Another member has approximately 1,400 individuals holding 12,000 licenses nationwide. In addition to initial licenses, Council members face annual renewals in 51-plus jurisdictions, and must satisfy all the underlying requirements, such as pre-licensing and continuing education, as well as post-licensure oversight. This redundancy costs Council members anywhere from tens of thousands to many millions of dollars annually to administer.

In addition to the lack of full reciprocity, the standards by which the States measure compliance with licensing requirements differ from State to State, as well. These include substantive requirements—pre-licensing education, continuing education and criminal background checks, for example—as well as the administrative procedures to comply with these requirements. In addition to the day-to-day difficulties the current set-up imposes, the lack of uniform application of law among the States inhibits efforts to reach full reciprocity. Some States may be disinclined to license as a nonresident a producer whose home State has "inferior" licensing standards, even a State with similar or identical statutory language. In fact, several States that have failed to adopt compliant licensure reciprocity regimes (notably California and Florida) claim their refusal is based on this absence of uniform standards—thus implying that the standards of other States do not measure up.

The NAIC has attempted to move the States toward uniformity, and we are especially grateful for the herculean efforts that many State regulators have made toward this goal. Following on the PLMA, the NAIC adopted uniform licensing standards (ULS), which include 42 separate standards purporting to establish uniform approaches to licensing issues ranging from an applicant's age, to education requirements, to examinations, to applications. The NAIC has spent most of the last decade encouraging the States to adopt the ULS, and in 2008 performed as assessment of every State's compliance with the standards. A report was issued, and a follow-up was done in 2009.[6] The 2008 report and 2009 follow-up found a significant lack of uniformity across the States, particularly on licensure requirements such as fingerprinting/background checks, where divergent State approaches are extremely burdensome on producers.[7]

Even if there were broad State compliance with the ULS, however, producer licensing requirements would be far short of uniformity for the simple reason that a significant number of the "uniform standards" do not create a single requirement for the States to meet, rather they serve more as suggestions or a menu of options to guide State action.

Of the 42 standards, there are roughly 17 that do not require the States to meet a uniform requirement. Some of the 17 are clearer than others in their lack of standard-setting (Standard 12, for example, provides that the standard for failure of examination and re-testing is to be "determined by each State"), but all give the

[5] FAME is a 501(c)(3) charitable and educational organization administered by The Council of Insurance Agents & Brokers and is located in Washington D.C.

[6] NAIC Producer Licensing (EX) Working Group, Producer Licensing Assessment Aggregate Report of Findings, Feb. 19, 2008; NAIC Producer Licensing (EX) Working Group, Producer Licensing Assessment Progress Report, Mar. 16, 2009.

[7] NAIC Producer Licensing (EX) Working Group, Producer Licensing Assessment Aggregate Report of Findings, Feb. 19, 2008, p. 14.

States flexibility that is unwarranted if the goal is to have the same requirements in every State.

These numbers—and, more critically, the regulatory and administrative burdens they represent—vividly demonstrate that, despite the improvements that resulted from the enactment of NARAB, comprehensive reciprocity and uniformity in producer licensing laws remains elusive, and it does not appear the NAIC and the States are capable of fully satisfying those goals. That is not a slight on the regulators—it is almost an impossible task getting regulators, legislators, and other stakeholders from 56 different jurisdictions to agree to a single set of licensing requirements and procedures—but it is the reason we need a national licensing framework.

NARAB II

The inability of the States to fully implement licensing reciprocity and to make real progress toward uniform laws and regulations has been demonstrated repeatedly in the dozen years since GLBA's enactment. The Federal law put pressure on the States and resulted in real improvements in licensing processes, but the resistance to comprehensive change has stymied attempts to achieve comprehensive reform. As a result, brokers continue to face differing licensing obligations across the States, imposing administrative and financial burdens that affect not only brokers, but consumers as well. This is why The Council—as well as all other major stakeholders, including the State insurance regulators represented through the NAIC, support enactment of S. 534, the NARAB II legislation.

NARAB would be a self-regulatory national licensing authority operated by a Presidentially appointed Board of Directors. A majority of the Board would be State insurance regulators, with the remainder representing the various segments of the insurance industry.

NARAB membership would be voluntary. Insurance producers—agents, brokers, and agencies—who opt to become members of NARAB would have to obtain resident licenses from their home States before applying for NARAB membership. Once licensed in their home States, producers operating in multiple jurisdictions could apply for NARAB membership and one-stop nonresident licensing. To qualify for membership, a producer would be required to comply with NARAB's membership criteria. The NARAB Board would establish the membership criteria, which would include standards for personal qualifications, education, training and experience. In addition, NARAB member applicants would be required to undergo a national criminal background check if their resident State does not require one. Nonresident States would be prohibited from imposing any requirement upon a member of NARAB that is different from the criteria imposed by NARAB.

Applicants would have to pay the fees mandated by each State to receive licenses. Moreover, NARAB would levy and collect assessments from members to cover administrative expenses. The licenses would be obtained from, and the fees would be paid to, NARAB, which would ensure that appropriate licensure applications are filed with, and the requisite fees paid to, each State from which NARAB members seek a license. In other words, NARAB would function as a clearinghouse to more efficiently process multi-State license applications.

NARAB membership would be renewed annually, and NARAB would have the authority to bring disciplinary actions to deny, suspend, revoke or decline renewal of membership. The membership criteria for any NARAB member must meet and exceed the highest professional requirements that currently exist among States. Thus, as a practical matter, to be eligible for NARAB membership a producer would have to effectively satisfy the substantive licensing requirements for all the States.

NARAB would thus be given the authority, among other things, to:

- Create a clearinghouse for processing insurance producer licenses which would avoid duplication of paperwork and effort State-by-State;
- Issue uniform insurance producer applications and renewal applications to apply for the issuance or renewal of State licenses;
- Develop uniform continuing education standards and/or establish a reciprocity process for continuing education credits;
- Create a national licensing exam process; and
- Utilize a national database for the collection of regulatory information concerning the activities of insurance producers.

Finally, the legislation does not seek to replace or displace State insurance regulation. Indeed, the bill very clearly retains State regulatory authority over insurance producers. Although NARAB would have an important role in the licensing of nonresident insurance producers, the bill clarifies the State regulators' continuing role in the licensure process through the notice period and regulator participation on the NARAB Board and in standard setting. Moreover, State regulators would continue to supervise and discipline producers, and would continue to enforce State consumer protection laws.

Conclusion

The licensing of insurance agents and brokers across the country is unnecessarily burdensome, inefficient and costly. The States have worked for years to devise a system to overcome the obstacles created by 56 different jurisdictions seeking to do it their own ways, but for understandable reasons, the political dynamic in those jurisdictions has precluded uniformity. The NARAB provisions of the Gramm-Leach-Bliley Act, enacted in 1999, were the first step in the process toward creating a sensible, streamlined system. Meanwhile, the pace of interstate activity in the insurance marketplace has outstripped the pace of reform efforts in individual States. The NAIC leadership is to be commended for embracing the administrative simplicity that would be achieved through the enactment of S. 534. We strongly believe that this legislation is needed to finally create a State insurance producer licensing system that works for today's agents and brokers—and today's marketplace.

Thank you for your consideration of our views, and for your willingness to devote your legislative attention to this issue.

PREPARED STATEMENT OF BAIRD WEBEL

SPECIALIST IN FINANCIAL ECONOMICS, CONGRESSIONAL RESEARCH SERVICE

MARCH 19, 2013

Mr. Chairman, Ranking Member Johanns, Members of the Subcommittee:

Thank you for the opportunity to testify before the Subcommittee. My name is Baird Webel. I am a Specialist in Financial Economics at the Congressional Research Service. This statement responds to your request for testimony addressing the general topic of today's hearing and particularly legislation before the Subcommittee. My written testimony begins with a discussion of some general approaches that Congress has taken in addressing insurance regulation in the past and this is followed with a section addressing insurance producer licensing, past proposals for a National Association of Registered Agents and Brokers, and S. 534, the National Association of Registered Agents and Brokers Reform Act of 2013. The testimony concludes with an appendix providing general background on insurance regulation drawn from forthcoming and past CRS reports.

CRS's role is to provide objective, nonpartisan research and analysis to Congress. CRS takes no position on the desirability of any specific policy. Any arguments presented in my written and oral testimony are for the purposes of informing Congress, not to advocate for a particular policy outcome.

Insurance Regulation and Federal Legislation

The individual States have been the primary regulators of insurance in this country for the past 150 years. The 1945 McCarran-Ferguson Act specifically authorized the States' role and Congress has recognized State primacy in insurance regulation in more recent laws shaping the financial regulatory system, such as the Gramm-Leach-Bliley Act (GLBA), also known as the Financial Services Modernization Act of 1999 (P. L. 106–102), and the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act; P.L. 111–203). Although Congress may have generally reaffirmed the State-based system in such laws, the operation of the system has continued to be of interest to Congress, as evidenced, for example, by this hearing today.

Legislative proposals to change various aspects of the insurance regulatory system have been introduced periodically over the years since 1945. These proposals have ranged from relatively minor adjustments to completely rethinking the role of the Federal Government in the system. The approaches considered by Congress in the past have included:

Creation of a Broad and Optional Federal Regulatory System for Insurance

Examples of this include several different bills calling for an optional Federal charter for insurers akin to the current dual banking regulatory system, in which a bank may receive a charter from either an individual State or a Federal regulator. The most recent such legislation to be introduced was H.R. 1880 in the 111th Congress, which was referred to the House Committee on Financial Services.

Creation of a Federal Regulatory System for Particular Types of Insurance

In the discussion over the past decade about the possibility of increased Federal involvement in insurance issues, arguments are sometimes made regarding the differing local characteristics of insurance, which is particularly applicable to property/casualty insurance. Some have thus suggested that, rather than a full-scale Federal charter for insurance, it would be more appropriate to have Federal regulation for lines of insurance that face largely the same characteristics across the country. During House committee consideration of legislation (H.R. 2609, 111th Congress) incorporated into the Dodd-Frank Act, amendments were offered to create a Federal charter for reinsurers and to create a Federal charter for bond insurers. These amendments were withdrawn before being voted upon in committee. The reinsurer amendment was also offered as a stand-alone bill (H.R. 6529, 111th Congress), which was referred to the House Committee on Financial Services.

Expansion of Other Federal Regulatory Powers to Include Insurance

Federal oversight on insurance could be implemented from entities that are not set up specifically to address insurance. For example, legislation (H.R. 3126, 111th Congress) incorporated into the Dodd-Frank Act initially would have authorized the Consumer Financial Protection Bureau to oversee title, credit, and mortgage insurance, although the final bill did not do so. The Federal Reserve, following the Dodd-Frank Act, regulates holding companies that have banking subsidiaries, including many whose primary business is insurance, as well any companies designated by the Financial Stability Oversight Council (FSOC) as systemically important, which could include insurance companies.

Federal Preemption of Multiple State Regulatory Authority in Favor of a Single State

Congress took this approach in the Liability Risk Retention Act (LRRA; 15 U.S.C. § 3901 *et seq*), which was enacted in 1981 and amended in 1986. The LRRA allows a limited range of State-chartered insurance companies to operate throughout the country without licenses from the individual States. Other examples include the Nonadmitted and Reinsurance Reform Act (NRRA), which was enacted as part of the Dodd-Frank Act. The NRRA provides that the home State of the insurance consumer would have primary tax and regulatory authority over surplus lines insurance.

Broad Federal Standard Setting to be Carried Out by Other Entities

The National Association of Registered Agents and Brokers (NARAB) provisions of the Gramm-Leach-Bliley Act, which would be further amended by S. 534 under discussion today, are a primary example of this sort of approach. Congress sets the broad goals of uniformity and reciprocity in insurance producer licensing but creates a private body with the authority to fill in the details and manage the process. Another example would be a provision of the NRRA, which preempts State laws on eligibility of surplus lines insurers if they conflict with National Association of Insurance Commissioner (NAIC) model laws.

Insurance Producer Licensing and NARAB

Licensing of insurance agents and brokers (known generally as "producers") has long been an integral part of the insurance regulatory system. Individual States typically require that insurance producers operating within their borders obtain a license from that State, and different licenses are also often required for different lines of insurance. Such licensure provides a mechanism for insurance regulators to enforce standards of conduct, particularly with regard to consumer protections, as well as providing a revenue source to help defray the cost of the insurance regulatory system. Aspects of insurance producer licensing include specific education or knowledge requirements, such as continuing education, and, in some States, criminal background checks. The NAIC has adopted model laws regarding licensure and a model insurance producer license form, but individual States are free to modify NAIC models, or not adopt them at all, resulting in variability in licensing requirements across the country. Insurance producers who operate in multiple States have long sought increased uniformity and reciprocity across States to reduce their costs resulting from the multiplicity of license requirements.

In addition to the costs that might result from the specific aspects of the insurance licensing system, any professional licensing regime acts as a barrier to entry for those who might be interested in providing services that require a license. Economic theory suggests that such barriers increase consumer costs to some degree and have the potential to be used as a protectionist measure to prevent competition, allowing license-holders to extract economic rents from consumers. Whether or not the public benefits resulting from licensure outweigh the costs is a decision to be evaluated on a case-by-case basis by public policymakers. Some form of licensure for those in the financial services industry has been generally accepted and is required in Federal law for people involved in securities transactions with the public, for example.

GLBA and NARAB I

Provisions in the Gramm-Leach-Bliley Act sought to address insurance producer complaints about the variation in State licensing requirements through a sort of provisional Federal preemption of State laws. The law called for the creation of a private, nonprofit licensing body, the National Association of Registered Agents and Brokers, whose insurance producer members would have been authorized to operate across State lines without individual licenses from every State. While backed by Federal authority, the NARAB to be created by the provisions in GLBA (hereafter referred to as "NARAB I") would have been entwined in the system of State regulation. Membership in NARAB I would have been open only to people already holding a State insurance producer license and the NAIC would have appointed the members of the NARAB I board and had other oversight authorities.

The NARAB I language in GLBA also offered the States the opportunity to avoid creation of the NARAB I organization if a majority of the States created among themselves systems of either uniformity or reciprocity in insurance producer licensing within a 3-year window after passage of GLBA. The NAIC was given the authority to determine whether the States met the GLBA standard with the possibility of Federal judicial review of this determination. The individual States and the NAIC reacted relatively quickly to this opportunity with the promulgation of an NAIC model law that would provide for reciprocity and the adoption of laws providing for reciprocity in sufficient number of States that the NAIC determined the GLBA standards were met; as a result, the NARAB I organization was not created.

The GLBA statutory requirements for reciprocity may have been satisfied by 2002, but insurance producers continued to identify inefficiencies and costs of the State licensing system in the years following. In 2008, testimony before a House subcommittee, for example, an insurance agent representative indicated that States continued to "impose additional conditions and requirements"[1] on nonresident agents despite the reciprocity called for in law. In 2009, the Government Accountability Office (GAO) cited issues regarding fingerprinting and background checks as particular barriers to uniformity or reciprocity in producer licensing and as potentially posing a problem for insurance consumer protection. GAO also found differences in licensing requirements and insurance line definitions as potentially creating inefficiencies that "could result in higher costs for insurers, which in turn could be passed on to consumer[s]."[2] In addition to concerns about the substance of the reciprocity in place, reciprocity laws have not been adopted by every State. The NAIC certified 47 States as reciprocal, but the three States not certified were California, Florida, and Washington, which together have nearly 20 percent of the Nation's population.

Concerns about the effect, or lack of effect, of the NARAB I provisions have prompted some Members of Congress to seek a further legislative solution.

NARAB II Legislation

Legislation to mandate the creation of a NARAB organization (hereafter referred to as NARAB II) was first introduced into the House of Representatives in the 110th Congress (H.R. 5611), with similar legislation in the 111th Congress (H.R. 2554). The House passed these bills in both Congresses by voice vote, but the legislation was referred to committee when received by the Senate. NARAB II legislation was introduced in the 112th Congress (H.R. 1112) and the 113th Congress (H.R. 1155). Unlike the previous Congresses, the House did not bring H.R. 1112 to the floor in the 112th Congress. H.R. 1155 has been referred to committee in this Congress. Senate legislation to create NARAB II was first introduced in the 112th Congress (S. 2342), with the bill reintroduced in this Congress as S. 534.

Although specific legislative provisions, such as the precise makeup of the NARAB organization's board, have changed in the various iterations of NARAB II legislation, the bills have retained the same essential purpose. The bills would amend the NARAB sections from GLBA to remove the conditionality and instead create a NARAB organization regardless of State actions on reciprocity and uniformity. The

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[1] Statement of Tom Minkler on behalf of the Independent Insurance Agents & Brokers of America, Subcommittee on Capital Markets, Government-Sponsored Enterprises, and Insurance, Committee on Financial Services, U.S. House of Representatives, April 16, 2008, p. 6, available at *http://archives.financialservices.house.gov/hearing110/minkler041608.pdf.*

[2] U.S. Government Accountability Office, Insurance Reciprocity and Uniformity, GAO–09–372, April 6, 2009, p. 21, *http://www.gao.gov/products/GAO–09–372.*

NARAB II legislation would create an organization very similar to that originally envisioned in GLBA. It would be a nonprofit, private body, whose members would be required to be State-licensed insurance producers, but who would also be able to operate across States without having licenses from the individual States.

Among the differences between the NARAB II proposed in S. 534 and the original NARAB I are——

- *Appointment of the Board:*

NARAB I was to have a seven-member board appointed by the NAIC.[3] S. 534 specifies a 13-member board appointed by the President and confirmed by the Senate. Eight of the 13 are to be State insurance commissioners, with the remainder being representative of the insurance industry.

- *Oversight by the NAIC:*

In addition to the board appointments, NARAB I provided several other methods of NAIC oversight, including NAIC approval of NARAB bylaw changes and rules, and NAIC review of disciplinary actions.[4] S. 354 gives much less direct authority to the NAIC. For example, NARAB II would file changes to bylaws with the NAIC, but the NAIC would not have the authority to disapprove the changes.

- *Criminal Background Checks:*

S. 354 requires a Federal criminal background check prior to membership in NARAB II and provides for the performance of these checks by the U.S. Attorney General, including the authority of the Attorney General to charge fees to defray the costs incurred. There were no similar provisions on background checks in GLBA for NARAB I.

Appendix. Background on Insurance and Insurance Regulation

Insurance companies constitute a major segment of the U.S. financial services industry. The industry is often separated into two parts: *life and health insurance companies,* which also often offer annuity products, and *property and casualty insurance companies,* which include most other lines of insurance, such as homeowners insurance, automobile insurance, and various commercial lines of insurance purchased by businesses. Premiums for life/health companies in 2011 totaled $581.4 billion and premiums for property/casualty insurance companies totaled $436.0 billion.[5] Assets held by the insurance industry totaled approximately $7.5 trillion according to the National Association of Insurance Commissioners (NAIC).

Different lines of insurance present very different characteristics and risks. Life insurance typically is a longer-term proposition with contracts stretching into decades and insurance risks that are relatively well defined in actuarial tables. Property/casualty insurance typically is a shorter-term proposition with 6-month or 1-year contracts and greater exposure to catastrophic risks. Health insurance has evolved in a very different direction, with many insurance companies heavily involved with healthcare delivery, including negotiating contracts with physicians and hospitals and a regulatory system much more influenced by the Federal Government through Medicare, Medicaid, the Employee Retirement Income Security Act of 1974 (ERISA),[6] and the Patient Protection and Affordable Care Act (ACA).[7] This testimony will concentrate primarily on nonhealth insurance.

Insurance companies, unlike banks and securities firms, have been chartered and regulated solely by the States for the past 150 years. One important reason for this is an 1868 U.S. Supreme Court decision.[8] In *Paul v. Virginia,* the Court held that the issuance of an insurance policy was not a transaction occurring in interstate commerce and thus not subject to regulation by the Federal Government under the Commerce Clause of the U.S. Constitution. Courts followed that precedent for the next 75 years. In a 1944 decision, *U.S. v. South-Eastern Underwriters Association,* the Court found that the Federal antitrust laws were applicable to an insurance as-

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[3] The NAIC could lose this appointment authority if (1) States representing 50 percent of the total commercial lines insurance premiums did not satisfy uniformity or reciprocity requirements and (2) the NAIC had not approved the bylaws or was unable to supervise the organization.

[4] The NAIC could lose its oversight authority under the same conditions as the possible loss of its board appointment authority.

[5] Premium amounts used are net premiums written from AM Best, *2012 Statistical Study: U.S. Property/Casualty—2011 Financial Results,* March 26, 2012, and AM Best, *2012 Statistical Study: U.S. Life/Health—2011 Financial Results,* March 28, 2012.

[6] P.L. 93–406, 88 Stat. 829.

[7] P.L. 111–148, 124 Stat. 119.

[8] *Paul v. Virginia,* 75 U.S. (8 Wall.) 168 (1868).

sociation's interstate activities in restraint of trade.[9] Although the 1944 Court did not specifically overrule its prior holding in Paul, South-Eastern Underwriters created significant apprehension about the continued viability of State insurance regulation and taxation of insurance premiums. By 1944, the State insurance regulatory structure was well established, and a joint effort by State regulators and insurance industry leaders to legislatively overturn the South-Eastern Underwriters decision led to the passage of the McCarran-Ferguson Act of 1945.[10] The Act's primary purpose was to preserve the States' authority to regulate and tax insurance.[11] The Act also granted a Federal antitrust exemption to the insurance industry for "the business of insurance."[12]

After 1945, the jurisdictional stewardship entrusted to the States under McCarran-Ferguson was reviewed by Congress on various occasions. Some narrow exceptions to the 50-State structure of insurance regulation have been enacted, such as one for some types of liability insurance in the Liability Risk Retention Act (LRRA) created by Congress in 1981 and amended in 1986.[13] In general, however, when proposals were made in the past[14] to transfer insurance regulatory authority to the Federal Government, they were successfully opposed by the States as well as by a united insurance industry. Such proposals for increased Federal involvement usually spurred a series of regulatory reform efforts at the individual State level and by State groups, such as the NAIC and the National Conference of Insurance Legislators (NCOIL). Such efforts were directed at correcting perceived deficiencies in State regulation and forestalling Federal involvement. They were generally accompanied by pledges from State regulators to work for more uniformity and efficiency in the State regulatory process.

A major effort to transfer insurance regulatory authority to the Federal Government began in the mid-1980s and was spurred by the insolvencies of several large insurance companies. Former House Energy and Commerce Committee Chairman John Dingell, whose committee had jurisdiction over insurance at the time, questioned whether State regulation was up to the task of overseeing such a large and diversified industry. He chaired several hearings on the State regulatory structure and also proposed legislation that would have created a Federal insurance regulatory agency modeled on the Securities and Exchange Commission (SEC). State insurance regulators and the insurance industry opposed this approach and worked together to implement a series of reforms at the State level and at the NAIC. Among the reforms implemented was a new State accreditation program setting baseline standards for State solvency regulation. Under the accreditation standards, to obtain and retain its accreditation, each State must have adequate statutory and administrative authority to regulate an insurer's corporate and financial affairs and the necessary resources to carry out that authority. In spite of these changes, however, another breach in the State regulatory system occurred in the late 1990s. Martin Frankel, an individual who had previously been barred from securities dealing by the SEC, slipped through the oversight of several States' insurance regulators and diverted more than $200 million in premiums and assets from a number of small life insurance companies into overseas accounts.[15]

Another State reform largely implemented in the late 1980s and early 1990s was the introduction of State insurance guaranty funds.[16] These funds, somewhat analogous in function to the Federal Deposit Insurance Corporation (FDIC) for banks, provide protection for insurance consumers who hold policies from failed insurance companies. If an insurance company is judged by a State insurance regulator to be insolvent and unable to fulfill its commitments, the State steps in to rehabilitate

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[9] *U.S. v. South-Eastern Underwriters Association,* 322 U.S. 533 (1944).

[10] 15 U.S.C. § 1011 *et seq.*

[11] Richard Cordero, *Exemption or Immunity from Federal Antitrust Liability Under McCarran-Ferguson (15 U.S.C. 1011–1013) and State Action and Noer-Pennington Doctrines for Business of Insurance and Persons Engaged in It,* 116 ALR Fed 163, 194 (1993).

[12] 15 U.S.C. § 1012(b). The Supreme Court has made clear that the business of insurance does not include all business of insurers in *Group Health and Life Insurance, Co. v. Royal Drug, Co.,* 440 U.S. 205, 279 (1979). For further explanation of this distinction, see the CRS Report RL33683, *Courts Narrow McCarran-Ferguson Antitrust Exemption for "Business of Insurance": Viability of "State Action" Doctrine as an Alternative,* by Janice E. Rubin.

[13] 15 U.S.C. § 3901 *et seq.* See CRS Report RL32176, *The Liability Risk Retention Act: Background, Issues, and Current Legislation,* by Baird Webel.

[14] Most such proposals prior to the 1990s focused on relatively narrow amendments to McCarran-Ferguson rather than large-scale replacement of the State regulatory system.

[15] See, for example, "17-Year Sentence Affirmed for Investor Who Looted Insurers," *New York Times,* March 24, 2006, available at *http://www.nytimes.com/2006/03/24frankel.html?ref=martinfrankel.*

[16] For more information, see CRS Report RL32175, *Insurance Guaranty Funds,* by Baird Webel.

or liquidate the insurer's assets. The guaranty fund then uses the assets to pay the claims on the company, typically up to a limit of $300,000 for property/casualty insurance [17] and $300,000 for life insurance death benefits and $100,000 for life insurance cash value and annuities.[18] In most States, the existing insurers in the State are assessed to make up the difference should the company's assets be unable to fund the guaranty fund payments. This after the fact assessment stands in contrast to the FDIC, which is funded by assessments on banks prior to a bank failure and which holds those assessments in a segregated fund until needed. Insurers who are assessed by guaranty funds generally are permitted to write off the assessments on future State taxes, which indirectly provide State support for the guaranty funds.

The Gramm-Leach-Bliley Act

The 1999 Gramm-Leach-Bliley Act (GLBA)[19] significantly overhauled the general financial regulatory system in the United States. Support for GLBA came largely as a result of market developments frequently referred to as "convergence." Convergence in the financial services context refers to the breakdown of distinctions separating different types of financial products and services, as well as the providers of once separate products. Drivers of such convergence include globalization, new technology, e-commerce, deregulation, market liberalization, increased competition, tighter profit margins, and the growing number of financially sophisticated consumers.

GLBA intended to repeal Federal laws that were inconsistent with the way that financial services products were actually being delivered, and it removed many barriers that kept banks or securities firms from competing with, or affiliating with, insurance companies. The result was the creation of a new competitive paradigm in which insurance companies found themselves in direct competition with brokerages, mutual funds, and commercial banks. GLBA did not, however, change the basic regulatory structure for insurance or other financial products. Instead, it reaffirmed the McCarran-Ferguson Act, recognizing State insurance regulators as the "functional" regulators of insurance products and those who sell them.[20]

Some insurance companies believe that in the post-GLBA environment, State regulation places them at a competitive disadvantage in the marketplace. They maintain that their noninsurer competitors in certain lines of products have federally based systems of regulation that are more efficient, while insurers remain subject to perceived inefficiencies of State insurance regulation, such as the regulation of rates and forms as well as other delays in getting their products to market. For example, life insurers with products aimed at retirement and asset accumulation must now compete with similar bank products. Banks can roll out such new products nationwide in a matter of weeks, while some insurers maintain that it can take as long as 2 years to obtain all of the necessary State approvals for a similar national insurance product launch. In the aftermath of GLBA, the largely united industry resistance to Federal intervention in insurance changed. Many industry participants, particularly life insurers, larger property/casualty insurers, and larger insurance brokers, began supporting broad regulatory change for insurance in the form of an optional Federal charter for insurance patterned after the dual chartering system for banks.[21]

GLBA also addressed the issue of modernizing State laws dealing with the licensing of insurance agents and brokers and made provision for a federally backed licensing association, the National Association of Registered Agents and Brokers (NARAB). NARAB would have come into existence 3 years after the date of GLBA's enactment if a majority of the States failed to enact the necessary legislation for uniformity or reciprocity at the individual State level. The requisite number of States enacted this legislation within the 3-year period, and thus the NARAB provisions never came into effect. The issue of insurance producer licensing reciprocity

[17] National Conference of Insurance Guaranty Funds, "Facts and Statistics," available at *http://www.ncigf.org/media-facts.*

[18] National Organization of Life & Health Insurance Guaranty Associations, "Frequently Asked Questions," available at *http://www.nolhga.com/policyholderinfo/main.cfm/location/questions.*

[19] P.L. 106–102, 113 Stat. 1338.

[20] Functional regulation would entail, for example, insurance regulators overseeing insurance products being offered by banks, while banking regulators would oversee banking products offered by insurers. Institutional regulation tends to focus more on the charter of the institution so, for example, banking regulators oversee all the activities of a bank even if the bank is offering insurance products.

[21] Banking charters are available from both the individual States and the Federal Government. For more information on optional Federal charter legislation, see CRS Report RL34286, *Insurance Regulation: Federal Charter Legislation,* by Baird Webel.

or uniformity continued, as some saw and continue to see problems in the actions taken by the individual States. Not every State has passed legislation implementing reciprocity, and some have argued that it has not always been implemented as smoothly as desired even in those States that did.

Insurance after the Gramm-Leach-Bliley Act

Congress passed the Gramm-Leach-Bliley Act to enhance competition among financial services providers. Though many observers expected banks, securities firms, and insurers to converge as institutions after it passed, this has not occurred as expected. In fact, the major merger between a large bank, Citibank, and a large insurer, Travelers, which partially motivated the passage of GLBA, has effectively been undone. The corporation that resulted from the merger, Citigroup, has divested itself of almost all of its insurance subsidiaries. Although large bank-insurer mergers did not occur as expected, significant convergence continued. Instead of merging across sectoral lines, banks began distributing-but not "manufacturing"-insurance, and insurers began creating products that closely resembled savings or investment vehicles. Consolidation also continued within each sector, as banks merged with banks and insurers with insurers. In addition, although Congress instituted functional regulation in GLBA, regulation since has still tended to track institutional lines.[22]

From the 107th through the 110th Congresses, congressional interest in insurance regulatory issues continued. A number of broad proposals for some form of Federal chartering or other Federal intervention in insurance regulation were put forward in both houses of Congress and by the Administration, but none were marked up or reported by the various committees of jurisdiction.[23] In the same timeframe, a number of narrower bills affecting different facets of insurance regulation and regulatory requirements were also introduced in Congress, including bills addressing surplus lines[24] and reinsurance, insurance producer licensing, and expansion of the Liability Risk Retention Act beyond liability insurance.

Insurance and the Financial Crisis

As the 110th Congress approached its close, the financial crisis that began in 2007 reached panic proportions with the conservatorship of Fannie Mae and Freddie Mac, the failure of Lehman Brothers, and the government rescue of American International Group (AIG) in September 2008. This crisis overlaid a range of new issues and arguments to the previously existing debate on insurance regulatory reforms. The financial crisis grew largely from sectors of the financial industry that had previously been perceived as presenting little systemic risk, including insurers. Some see the crisis as resulting from failures or holes in the financial regulatory structure, particularly a lack of oversight for the system as a whole and a lack of coordinated oversight for the largest actors in the system. Those holding this perspective increased the urgency in calls for overall regulatory changes, such as the implementation of increased systemic risk regulation and Federal oversight of insurance, particularly larger insurance firms. The generally good performance of insurers in the crisis, however, also provided additional affirmation to those seeking to retain the State-based insurance system.

Although insurers in general are considered to have weathered the financial crisis reasonably well, the insurance industry saw two notable failures—one general and one specific. The first failure was spread across the financial guarantee or monoline bond insurers. Before the crisis, there were about a dozen bond insurers in total, with four large companies dominating the business. This type of insurance originated in the 1970s to cover municipal bonds but the insurers expanded their businesses since the 1990s to include significant amounts of mortgage-backed securities. In late 2007 and early 2008, strains began to appear due to this exposure to mortgage-backed securities. Ultimately some bond insurers failed and others saw their previously triple-A ratings cut significantly. These downgrades rippled throughout

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[22] See CRS Report RS21827, *Insurance Regulation After the Gramm-Leach-Bliley Act,* by Carolyn Cobb.

[23] Broad proposals from the 107th to 110th Congresses included the National Insurance Act of 2007 (S. 40 and H.R. 3200, 110th Congress); the National Insurance Act of 2006 (S. 2509 and H.R. 6225, 109th Congress); the Insurance Consumer Protection Act of 2003 (S. 1373, 108th Congress); and the Insurance Industry Modernization and Consumer Protection Act (H.R. 3766, 107th Congress), and the 2008 *Blueprint for a Modernized Financial Regulatory Structure* released by the U.S. Treasury and available at ***http://www.treasury.gov/press-center/press-releases/Documents/Blueprint.pdf.***

[24] Surplus lines insurance is insurance sold by insurance companies not licensed in the particular State where it is sold. For background on this insurance, see CRS Report RS22506, *Surplus Lines Insurance: Background and Current Legislation,* by Baird Webel.

the municipal bond markets, causing unexpected difficulties for both individual investors and municipalities who might have thought they were relatively insulated from problems stemming from rising mortgage defaults.

The second failure in the insurance industry was that of a specific company, American International Group.[25] AIG had been a global giant of the industry, but it essentially failed in mid-September 2008. To prevent bankruptcy in September and October 2008, AIG sought more than $100 billion in assistance from the Federal Reserve, which received both interest payments and warrants for 79.9 percent of the equity in the company in return. Multiple restructurings of the assistance have followed, including nearly $70 billion through the U.S. Treasury's Troubled Asset Relief Program (TARP). The rescue ultimately resulted in the U.S. Government owning 92 percent of the company. The assistance for AIG has ended with all the Federal Reserve assistance repaid and the sale by the U.S. Treasury of all of its equity stake in the company.

The near collapse of the bond insurers and AIG could be construed as regulatory failures. One of the responsibilities of an insurance regulator is to make sure the insurer remains solvent and is able to pay its claims. Because the States are the primary insurance regulators, some may go further and argue that these cases specifically demonstrate the need for increased Federal involvement in insurance. The case of AIG, however, is a complicated one. Although AIG was primarily made up of State-chartered insurance subsidiaries, at the holding company level it was a federally regulated thrift-holding company with oversight by the Office of Thrift Supervision (OTS). The immediate losses that caused AIG's failure came from both derivatives operations overseen by OTS and from securities lending operations that originated with securities from State-chartered insurance companies.

The 111th Congress responded to the financial crisis with the Dodd-Frank Wall Street Reform and Consumer Protection Act,[26] which enacted broad financial regulatory reform. Although the Dodd-Frank Act had a number of provisions that directly and indirectly addressed insurance, it left the States as the primary functional regulators of insurance. The Dodd-Frank Act provisions that most directly addressed insurance and are of ongoing concern were (1) creation of a Federal Insurance Office (FIO); (2) systemic-risk provisions, such as the creation of a Financial Stability Oversight Council (FSOC) with the authority to oversee systemically important insurers; and (3) previously introduced provisions harmonizing the tax and regulatory treatment of surplus lines insurance and reinsurance (the Nonadmitted and Reinsurance Reform Act).[27] Provisions in the law regarding holding company oversight could also affect a number of companies who are primarily insurers, but who also have banking or thrift subsidiaries and are thus overseen by the Federal Reserve following the Dodd-Frank Act.

Attention on insurance regulation in the 112th Congress was largely occupied with follow-up to the Dodd-Frank Act. The Dodd-Frank Act left many of the specifics up to regulatory rulemaking and this rulemaking is still ongoing. Of particular concern was the specific approach that the Federal Reserve may take to bank or thrift-holding companies who are primarily involved in insurance and the possibility of FSOC designating some insurers and systemically important and thus subject to additional oversight. Neither issue reached a resolution during the 112th Congress.

[25] See CRS Report R40438, *Federal Government Assistance for American International Group (AIG),* by Baird Webel.

[26] P.L. 111–203, 124 Stat. 1376. See CRS Report R41350, *The Dodd-Frank Wall Street Reform and Consumer Protection Act: Issues and Summary,* coordinated by Baird Webel.

[27] For more information on the specific insurance provisions in the Dodd-Frank Act, see CRS Report R41372, *The Dodd-Frank Wall Street Reform and Consumer Protection Act: Insurance Provisions,* by Baird Webel.

ADDITIONAL MATERIAL SUPPLIED FOR THE RECORD

Testimony of
National Association of Insurance and Financial Advisors

Before the Senate Committee on Banking, Housing and Urban Affairs

March 19, 2013

Streamlining Regulation, Improving Consumer Protection and
Increasing Competition in Insurance Markets

About NAIFA:
Founded in 1890 as The National Association of Life Underwriters (NALU), NAIFA is one of the nation's oldest and largest associations representing the interests of insurance professionals from every Congressional district in the United States. NAIFA members assist consumers by focusing their practices on one or more of the following: life insurance and annuities, health insurance and employee benefits, multiline, and financial advising and investments. NAIFA's mission is to advocate for a positive legislative and regulatory environment, enhance business and professional skills, and promote the ethical conduct of its members. For more information about NAIFA, visit www.naifa.org.

We appreciate the opportunity to submit testimony to today's hearing.

Background:

Insurance agents and brokers are required to be licensed in every state in which they conduct business. In order to obtain and maintain licenses, producers must comply with different and often inconsistent standards in numerous states and contend with duplicative licensing processes. For NAIFA members, the overwhelming majority of whom are licensed in multiple states, multi-state licensing obligations impose costly and time-consuming burdens.

Multi-state licensing has improved within the last 15 years. In 1999, the NARAB provisions of the Gramm-Leach-Bliley Act (GLBA) successfully pushed the States to enact producer licensing reforms. In 2000, the NAIC adopted the Producer Licensing Model Act (PLMA), which provides for a system of reciprocal licensing in the States pursuant to the NARAB requirements. The PLMA has been enacted in some form in over 40 states and in the District of Columbia.

NAIFA has supported the NAIC's producer licensing reform efforts at every step of the way and NAIFA members are, in large part, responsible for enactment of the PLMA in the States. In addition, NAIFA was involved in the development of the National Insurance Producer Registry (NIPR), which operates the electronic database of producer information that has made licensing significantly faster and easier, electronically "smoothing over" many of the differences in the States' application requirements. A NAIFA representative currently serves on NIPR's Board and has held the position of Vice President for four years.

Despite this progress, however, administrative differences among the states remain, causing inefficiencies and unnecessary costs for insurance producers and consumers.

Our Position:

NAIFA supports the enactment of S. 534, legislation creating the National Association of Registered Agents and Brokers (NARAB II), because it would allow insurance producers who are licensed to operate in multiple states to comply with a single set of non-resident licensing and continuing education rules. The need to streamline the non-resident licensing process is important for NAIFA members who frequently relinquish clients when they move to another state because of the burdens imposed by multistate licensing. NAIFA members are in the business of helping individuals and families address their basic financial security needs and prepare for retirement by helping them secure risk transfer based products such as life insurance, annuities and other retirement products, long-term care, disability income coverage, medical and hospital insurance. The relationships our members have with their clients are based on a trust developed through years of providing important guidance and assistance in preparing for life's inevitable risks of dying too soon, living too long, becoming sick or disabled and/or needing long-term care.

For many NAIFA members, however, the varying licensing compliance requirements from state-to-state make it unnecessarily burdensome to follow a client to another state when he or she moves. As a result, NAIFA members must hold licenses in multiple states and frequently must refer their clients to another agent. Enactment of this legislation is necessary because, in today's increasingly mobile world, it is a disservice to insurance consumers to have a regulatory system in place that makes it difficult for a consumer to retain their trusted agent when they move to another state. According to a 2012 poll, 80% of NAIFA members surveyed have lost clients who moved to a state in which the NAIFA member was not licensed. 12% of survey respondents have lost over 50 clients due to their clients moving to states in which the producer was not licensed.

Importantly, NARAB II upholds state authority to regulate and offer consumer protections; will establish high level membership criteria, including a criminal background check; will benefit consumers through increased competition among agents and brokers and greater consumer choice; and, will allow producers who are licensed and operate in multiple states to comply with a single set of non-resident licensing and continuing education rules.

NAIFA encourages and supports enactment of S. 534 and the creation of the National Association of Registered Agents and Brokers and thanks Senators Tester and Johanns for the introduction of this important legislation.

Respectfully submitted,

Robert O. Smith, J.D., CLU, ChFC, LIC
President

National Association of Insurance and Financial Advisors
2901 Telestar Court
Falls Church, VA 22042
703-770-8000

February 19, 2013

Chairman Tim Johnson Senate Banking Committee The United States Senate	Ranking Member Mike Crapo Senate Banking Committee The United States Senate
Chairman Jeb Hensarling House Financial Services Committee U.S. House of Representatives	Ranking Member Maxine Waters House Financial Services Committee U.S. House of Representatives

Dear Chairmen and Ranking Members:

The undersigned organizations are writing to express our strong support of legislation that would establish the National Association of Registered Agents and Brokers (NARAB). This common-sense legislation would create a streamlined agent and broker licensing system that strengthens the competitive insurance market while maintaining important consumer protections. In an increasingly mobile society, NARAB would allow agents and brokers to more efficiently operate on a multi-state basis.

Specifically, the legislation would create a nonprofit board for insurance agents and brokers to obtain approval to operate on a multi-state basis. NARAB would be governed by a panel dominated by state regulators and would establish standards for membership that exceed the existing requirements in any state. A prospective NARAB member would be required to be fully licensed in his or her home state and satisfy rigorous membership criteria, and an approved NARAB member could utilize the association to obtain the regulatory approval necessary to operate in any other selected jurisdiction.

In addition to the support of the below organizations, the legislation has also received the endorsement of the National Association of Insurance Commissioners. Representatives Randy Neugebauer (R-TX) and David Scott (D-GA) and Senators Jon Tester (D-MT) and Mike Johanns (R-NE) plan to introduce the legislation in their respective chambers in the coming weeks, and we urge you to support this bill that will provide important benefits to insurance consumers.

Sincerely,

American Association of Managing General Agents
American Insurance Association
Council of Insurance Agents and Brokers
Independent Insurance Agents and Brokers of America
Insured Retirement Institute
National Association of Insurance and Financial Advisors
National Association of Mutual Insurance Companies
National Association of Professional Surplus Lines Offices
Property Casualty Insurance Association of America

National Association of Insurance Commissioners & The Center for Insurance Policy and Research

March 8, 2013

Chairman Tim Johnson
Senate Banking Committee
United States Senate

Ranking Member Mike Crapo
Senate Banking Committee
United States Senate

Chairman Jeb Hensarling
House Financial Services Committee
U.S. House of Representatives

Ranking Member Maxine Waters
House Financial Services Committee
U.S. House of Representatives

Dear Chairmen and Ranking Members:

We write today on behalf of the National Association of Insurance Commissioners (NAIC) in support of the National Association of Registered Agents and Brokers Reform Act of 2013 (NARAB II). Founded in 1871, the NAIC is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and the five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight. NAIC members, together with the central resources of the NAIC, form the national system of state-based insurance regulation in the U.S.

The NARAB II legislation establishes the National Association of Registered Agents and Brokers (NARAB) to provide a mechanism for licensing, continuing education, and other nonresident insurance producer qualification requirements. Agents and brokers play an important role in the insurance marketplace by ensuring consumers are able to obtain insurance products that best fit their needs. State regulators' authority and oversight over agents and brokers provide critical protections to consumers of insurance products. The NARAB II legislation preserves these protections and provides appropriate measures for implementation of the NARAB, an entity already referenced in the Gramm-Leach Bliley Act. We hope you will strongly consider supporting this legislation.

Should you wish to discuss this letter or any other matter relating to the NAIC's views on this proposed legislation, please do not hesitate to contact Ethan Sonnichsen, Director of Government Relations, at (202) 471-3980 or Mark Sagat, Counsel and Manager, Financial Policy and Legislation, at (202) 471-3987.

Sincerely,

James J. Donelon
NAIC President
Louisiana Insurance Commissioner

Adam Hamm
NAIC President-Elect
North Dakota Insurance Commissioner

Monica J. Lindeen
NAIC Vice President
Montana Commissioner of Securities & Insurance

Michael F. Consedine
NAIC Secretary-Treasurer
Pennsylvania Insurance Commissioner

National Association of Professional Surplus Lines Offices, Ltd.
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Brady R. Kelley
Executive Director

Testimony of
The National Association of Professional Surplus Lines Offices (NAPSLO)

Before the
Senate Committee on Banking, Housing and Urban Affairs

March 19, 2013
Washington, D.C.

NAPSLO is the national trade association representing the surplus lines industry and the wholesale insurance distribution system. Since its formation in 1975, NAPSLO has become the authoritative voice of the surplus lines industry, advocating for the industry's vital role as a "safety valve" for hard-to-place and specialty insurance risks and for the industry's importance in the insurance marketplace and global economy.

NAPSLO's membership consists of approximately 400 brokerage member firms, 100 company member firms and 200 associate member firms, all of whom operate over 1,500 offices representing approximately 15,000 to 20,000 individual brokers, insurance company professionals, underwriters and other insurance professionals in the 50 states and the District of Columbia. NAPSLO is unique in that both surplus lines brokers and surplus lines companies are full members of the association; thus NAPSLO represents and speaks for the surplus lines wholesale marketplace.

We appreciate the opportunity to submit testimony to today's hearing.

NAPSLO commends Sens. Tester and Johanns for the introduction of the National Association of Registered Agents and Brokers Act (NARAB) and for the other original cosponsors to this legislation. This important legislation will streamline agent and broker licensing for those operating on a multi-state basis. Specifically, the legislation creates a nonprofit board governed by a panel of state insurance regulators and industry representatives to create rigorous standards and ethical requirements with a goal of applying licensing, continuing education and nonresident insurance producer standards on a multi-state basis. To be granted membership in NARAB, an agent or broker will still need to be licensed within his or her home state and satisfy all the membership requirements therein. Once an agent or broker has met the requirements set forth by NARAB, they will be able to become licensed and operate on a multi-state basis. Currently, these same brokers are required to obtain a license in each jurisdiction individually, resulting in onerous filings and paperwork which is often duplicative and inefficient.

It is also important to note what this legislation does not do. NARAB does not make any changes to the regulation of insurance from a single state or multi-state perspective. NAPSLO strongly supports the state-based system of insurance regulation, and is pleased this legislation will preserve the laws and regulations of individual states. The legislation simply addresses market entry barriers by creating a "one-stop" licensing association to ensure that all agents and brokers can operate in multiple jurisdictions with increased uniformity and efficiency.

Again, we commend the sponsors of this thoughtful and effective approach and encourage this Committee's prompt consideration of the legislation. NAPSLO is willing and eager to offer its resources to answer any questions about the bill's impact on the industry and stands ready to assist the Committee, its Members and staff, in any capacity we can. Thank you again for the opportunity to submit testimony to this important hearing.

AAMGA
American Association of Managing General Agents

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WRITTEN STATEMENT OF
BERND G. HEINZE, ESQ.
EXECUTIVE DIRECTOR OF THE
AMERICAN ASSOCIATION OF MANAGING GENERAL AGENTS

BEFORE THE

SUBCOMMITTEE ON SECURITIES, INSURANCE AND INVESTMENT
OF THE UNITED STATES SENATE
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

ON

STREAMLINING REGULATION, IMPROVING CONSUMER PROTECTION AND INCREASING COMPETITION IN INSURANCE MARKETS

Introduction

Good Morning Chairman Tester, Ranking Member Johanns, and Members of the Subcommittee. My name is Bernd G. Heinze. I am the Executive Director of the American Association of Managing General Agents (AAMGA), headquartered in King of Prussia, Pennsylvania, just west of Philadelphia.

The AAMGA is an international trade association comprised of 445 corporate member agents, brokers, insurance, captive and reinsurance companies, Lloyd's of London syndicates and underwriters, state stamping and surplus line offices and related professional entities all engaged in the wholesale insurance marketplace in the United States and the United Kingdom.

Since 1926, AAMGA members have been committed to serving admitted and excess and surplus lines markets with reliable integrity, and in offering competitive, creative, dependable insurance products, services and solutions to specialty and unique risk exposures. Collectively, these efforts are emblematic of the Association's role as a standard bearer of the wholesale insurance market, and as a credible authority to matters of importance to the domestic and global insurance community.

The AAMGA's 241 member managing general agents are located in all 50 states and are called upon to work with retail agents and their policyholder customers across the country in all lines of insurance business. In 2012, they wrote in excess of $20.6 billion in annual written premium. Our member agents employ over 25,000 employees in over 300 storefronts across America.

Thus, each day we see the challenges and opportunities that exist in this market, and are honored to have the privilege to share our views in support of the Subcommittee's on-going efforts in respect of streamlining the regulation, improving consumer protection, and increasing competition in the insurance marketplace.

Our testimony today pertains specifically to provide additional information in support of and the need for passage of the bipartisan Bill, S. 534; the "National Association of Registered Agents and Brokers Reform Act of 2013" (hereinafter also referred to as "NARAB II"). The AAMGA commends both you Mr. Chairman, and Ranking Member Johanns, for championing the introduction of this legislation, and garnering the strong bipartisan support to date. We also wish to acknowledge the ongoing efforts of this Subcommittee, for its continuing focus to examine ways in which to modernize commercial insurance markets and, thereby, implement procedures and streamline regulations that will enhance uniformity, efficiencies and competition, while maintaining the state based system of insurance regulation and ensuring consumer protections in the securitization of risk exposures.

The passage of NARAB II is important to AAMGA members – and all wholesale insurance professionals – as there are currently more than 2 million individuals and more than 500,000 business entities licensed to provide insurance services in the United States. While preserving state insurance departments' supervision over producer activities as part of a comprehensive regulatory framework designed to protect insurance consumer interests in insurance transactions, this legislation will allow uniformity in licensing and advance consumer protections as well as compliance timely and costly efficiencies for producers operating in multiple states.

Overview into the Wholesale Insurance Market

The wholesale insurance marketplace is comprised of agents and brokers entrusted with underwriting authority from the domestic and international insurance companies. Submissions for the protection of risk exposures are obtained from retail producers transacting business with the wholesale agents and brokers, who have specialized expertise and experience in specific lines of business.

The wholesale insurance market is essential to our nation's economic infrastructure. It provides protection and security to national industrial and local commercial businesses, those associated with operation of major public facilities like airports, schools, municipal utilities, and some of the largest port facilities in the country.

In the private sector, key commercial enterprises and consumers similarly rely on the wholesale insurance marketplace. These risks include, for example, those associated with electrical generation, oil production and refining, heavy construction, private aviation, ski resorts, trucking companies, restaurants and small businesses, aerospace manufacturing, mining, and agriculture, nursing homes and day care centers, large and small commercial and residential construction projects; maritime risks from jet skis to tanker vessels and every day risks from Main Street to Wall Street.

AAMGA agent and broker members include professional insurance facilities of varying size and multi-state operations to small and family businesses vital to maintaining| the spirit of entrepreneurial growth in the insurance industry and our economy.

As the business enterprises and risk exposures of consumers have ventured across state borders, so to have the activities of wholesale insurance agents and brokers as they transact and underwrite business beyond the home state in which they are incorporated or maintain their principal place of business. In accordance with state laws, this requires not the corporate entity, but every agent and broker of the wholesale agency or brokerage transacting business across state lines to be in compliance with each state's licensing requirements. Our members have had to ensure compliance with, what most times amount to redundant licensing requirements, beyond those that are already being complied with based upon the home state's licensing requirements. Others today rely on compliance departments they needed to create to track and ensure that every agent's and broker's license requirements in each and every state in which business is being transacted are tracked, maintained and completed.

These activities impose costly expenditures of time, resources and funds, and take away from the more important objective of expedient, prudent and professional underwriting to secure the risk exposures of consumers. For multi-state managing general agents and brokers the various state licensing, continuing education requirements and non-reciprocal state regulations add unnecessary burdens and costs without a commensurate increase in value to the consumer.

Benefits of the National Association of Registered Agents and Brokers Reform Act of 2013

Insurance is the DNA of capitalism and free market entrepreneurship. Providing the availability of varying levels of security from risk stimulates the growth of business and opportunities, provides incentives for research and development that help to create jobs and positive returns on investment and equity; and, for the public and private consumer, affords continuity and recovery from fortuitous events based on the terms and conditions of coverage.

S. 534 is critical to all our members and other agents and brokers operating on a multi-state basis. To that extent, we join in the testimony of the Independent Insurance Agents and Brokers of America, the Council of Insurance Agents and Brokers, and others supporting this legislation. NARAB II will build upon the regulatory experience at the state level, promote consistency in agent and agency licensing, and improve marketplace responsiveness. The Bill will provide needed reciprocity in producer licensing among the states, and provide policyholders with the opportunity to benefit from greater competition among agents and brokers.

The clearinghouse that would be created following passage of the legislation would allow wholesale insurance agents and brokers to obtain reciprocity in all states in which they are transacting business on behalf of policyholders, so long as they have first secured appropriate and proper licensing in their home states. Regulators within the individual states will continue to regulate, license and discipline agents and brokers located within their respective jurisdictions and, thereby, continue to enforce consumer protection laws. However, the NARAB II legislation will further advance the interests policyholders, as they will be afforded the enhanced protections and benefits of greater competition based upon those agents and brokers voluntarily participating in NARAB II membership.

While most states presently maintain a variety of individual licensing requirements, many differ in regard to the various certifications, fees, fingerprinting and other directives. Most problematic are the disparities among the states in regard to the licensing of business entities. While the National Association of Insurance Commissioners (NAIC) Producer Licensing Model Act (PLMA) brought some uniformity to the producer licensing process, it still left many of those decisions regarding the licensing process to the individual states. While some of the states have enacted the entire PLMA, a number have only enacted the reciprocity provisions of the model act. Of those that have adopted the entire model, several states have deviated significantly from its original language and intent.

These inconsistencies and inefficiencies impact every agent, broker and insurance consumer. Every AAMGA wholesale agent and broker member transacting business on a multistate basis continues to hold both resident and non-resident licenses for their underwriting activities across the country. Some of these licenses number into the thousands based upon each of the agents and brokers employed and the number of states in which business is transacted.

Most all of the State licenses also must be renewed annually throughout the year based upon the individual state requirements. Moreover, states also have continuing regulatory requirements and post-licensure oversight with which agents and brokers must also be in compliance.

We also wish to note the difficulties encountered as the various state regulators and courts interpret terms such as what constitutes the "selling," "soliciting" and "negotiating" of insurance. While many of the provisions of State regulations are identical, their interpretation is not. This leads to additional marketplace and enforcement inconsistencies and inefficiencies, as well as unnecessary costs and frustrations among wholesale agents and brokers seeking to comply with identical wording but varying interpretations.

For all these reasons, the AAMGA supports the National Association of Registered Agents and Brokers Reform Act of 2013, and appreciates the efforts of the sponsors and cosponsors of the Bill in utilizing this opportunity to focus on the need for insurance regulatory reform. This modernization of state regulation is targeted only to marketplace entry, as opposed to the date-to-day regulation of insurance by the states. Therefore, the increase of competition and reduction of compliance costs will provide benefits to consumers and wholesale agents and brokers alike.

The AAMGA and its members respectfully take the position that the provisions of NARAB II will modernize the current cumbersome licensing requirements in the various states. NARAB II will also allow a more equitable and efficient framework within which an insurance purchaser can work with their agent or broker of choice.

Conclusion

Mr. Chairman, this Act is an important step in sustaining the insurance market's effective, efficient and economical services to the public and private sector, while streamlining the processing, licensing and compliance components. Most importantly, it will develop and create a uniform and consistent foundation on which essential state based regulation can continue without restraining the creativity, investment and security provided by the wholesale insurance market.

NARAB II will further facilitate the open market, enhance competition, allow agents, brokers and insurers to be more responsive to consumer needs and provide the flexibility in the buying decisions being made.

The AAMGA looks forward to working with you Mr. Chairman, Ranking Member Johanns, Members of the Subcommittee and co-sponsors of the National Association of Registered Agents and Brokers Reform Act of 2013, as well as on other matters in furthering to develop the specifics and implementation of commercial insurance reform and modernization.

Thank you for the opportunity to provide the views of the American Association of Managing General Agents. We look forward to responding to any questions you may have, and providing additional information as may be warranted by the Subcommittee's additional activities in looking into the propriety of efforts to further streamline the regulation and improving consumer protection and increasing competition in the insurance marketplace.

Bernd G. Heinze, Esquire
Biographical Summary

Bernd G. Heinze, Esquire has been the executive director of the American Association of Managing General Agents (AAMGA) and its non-profit University since 2001. He speaks, testifies, lectures and teaches before insurance professionals, rating agencies, congressional and state legislators and regulators, industry organizations, colleges and universities in the US, Germany and the United Kingdom on a regular basis. He is also the executive editor of the quarterly trade publication *Wholesale Insurance News*, "WIN Magazine," which is distributed in over 40 countries around the world.

Mr. Heinze has served as:

- Vice-President and Chief Litigation Counsel for a Fortune 500 Insurance Company, where he was responsible for the management of all property and casualty litigation, claims and coverage wordings nationwide
- an equity litigation partner with an international law firm on insurance defense and coverage cases
- legislative assistant to Congressman Jack Kemp in the Washington, DC and Buffalo, NY offices
- executive assistant and deputy press secretary to Erie County (NY) Executive Edward J. Rutkowski in Buffalo, New York and
- weekend anchor for WAVA NewsRadio in Washington, DC

Mr. Heinze graduated with a BA in International Relations and Economics from the Canisius College (1978) in Buffalo, NY, was selected to and attended the Foreign Policy School at American University in Washington, DC and obtained his Juris Doctor degree with honors from the Temple University School of Law (1983) in Philadelphia. He is licensed to practice before the United States and Pennsylvania Supreme Courts, and the federal courts of Pennsylvania. He is also certified by all state insurance departments to present continuing education courses pertaining to insurance and legal related matters. He holds the highest possible peer review "AV Preeminent Rating" for Legal Ability and Ethical Standards from Lexis Nexis/Martindale Hubbell, and has been named annually as one of the "Top 100 Insurance Professionals in North America" by the *Insurance Distribution Letter* since 2001. He is a member of the Board of Governors of the Academy of Risk and Insurance Management at the St. Joseph's University in Philadelphia, PA, and the Board of Directors of Appalachian State University in Boone, North Carolina.

He has been named "Honoree of the Year" by the New Jersey Surplus Lines Association (2011); and "Man of the Year" by the Diabetes Research Institute Foundation (2012).

Mr. Heinze has served as Chair of the Montgomery Township, PA Industrial Development Authority, and serves *pro bono* as General Counsel for the "Whydah Expedition," the project to recover and conserve the remains of the only documented pirate ship to sink in 1717 off the coast of the US.

He and his wife live in suburban Philadelphia and have two daughters. Mr. Heinze is also the founder, president and an active volunteer firefighter with the Fire Department of Montgomery Township, PA.

TRUTH IN TESTIMONY DISCLOSURE

**SUBCOMMITTEE ON SECURITIES, INSURANCE AND INVESTMENT
OF THE UNITED STATES SENATE
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS**

Your Name: **Bernd G. Heinze, Esq.**		
1. Are you testifying on behalf of a Federal, State, or Local Government entity?		**No**
2. Are you testifying on behalf of an entity other than a Government entity?	**Yes**	
3. Please list any federal grants or contracts (including subgrants or subcontracts) which you have received since October 1, 1999: **None**		
4. Other than yourself, please list what entity or entities you are representing: **None**		
5. If your answer to question number 2 is yes, please list any offices or elected positions held or briefly describe your representational capacity with the entities disclosed in question number 4: **N/A**		
6. If your answer to question number 2 is yes, do any of the entities disclosed in question number 4 have parent organizations, subsidiaries, or partnerships to the entities for whom you are not representing?		**N/A**

A Heritage of Integrity and Professionalism

7. If the answer to question number 2 is yes, please list any federal grants or contracts (including subgrants or subcontracts) which were received by the entities listed under question 4 since October 1, 1999, which exceed 10% of the entities revenue in the year received, including the source and amount of each grant or contract to be listed:

N/A

Signature: **Date: March 19, 2013**

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Streamlining Regulation, Improving Consumer Protection and Increasing Competition in Insurance Markets

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS SUBCOMMITTEE ON SECURITIES, INSURANCE, AND INVESTMENT

Tuesday, March 19, 2013

538 Dirksen Senate Office Building

Mr. Chairman, thank you for holding this important hearing on streamlining regulation, improving consumer protection, and increasing competition in insurance markets. This objective is the very mission of our organization, Advocates for Insurance Modernization. We appreciate the opportunity to provide written testimony for the record to inform the Committee's consideration.

> *The modern insurance business holds a commanding position in the ...commerce of our Nation... (I)t has become one of the largest and most important branches of commerce... Perhaps no modern commercial enterprise directly affects so many persons in all walks of life as does ... insurance. Insurance touches the home, the family, and ... the business of almost (everyone)... in the United States.*
>
> *United States v. South-Eastern Underwriters Association*
> United States Supreme Court Decision, 1944

As the former Chair of the House Financial Services Committee observed a decade ago, insurance is "the glue that holds our economy together."[1] Insurance manages risk, protects assets, and provides families, businesses, and communities with the peace of mind to invest and expand. Thus, "[i]n the absence of insurance, just about any outcome seems to be a matter of luck."[2] Without insurance protection, there would be no transportation, no homeownership, no financial planning, and no commercial investment. In short, insurance is a foundation for economic growth and necessary for economic recovery.

Insurance & The Economy

- Insurance carriers and related activities accounted for $425 billion or 3.0 percent of U.S. gross domestic product in 2009.
- The U.S. insurance industry employed over 2.2 million people in 2010.
- Insurance companies provide businesses with capital for research, expansions, and other ventures. In 2008, insurance companies contributed $3.3 trillion to business development through their holdings in stocks and bonds.
- Insurance companies invest the premiums they collect in state and local public projects, such as schools and roads. In 2009, insurance companies invested $442.7 billion in municipal securities.
- Insurance companies pay levies on insurance premiums which amounted to $15.8 billion in 2010, or $51 for each person living in the U.S.

"Industry Overview" Insurance Information Institute. http://www.iii.org/facts_statistics/industry-overview.html

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[1] Best's Review, Jan. 1, 2002, "Oxley urges terror backstop."

[2] Peter Bernstein, Against the Gods/The Incredible Story of Risk, John Wiley & Sons (1996) at 203-204.

Despite the importance of the insurance industry to the modern economy, there is growing consensus that the existing insurance regulatory system has not kept pace with the changing national and international marketplace.

Advocates for Insurance Modernization (AIM), an organization committed to advancing a modern insurance regulatory system. By bringing together former state insurance regulators, AIM offers an experience-based perspective on the past and present challenges facing the industry, as well as the opportunities to create a system designed to promote competition, innovation, and economic growth.

With these constructive goals in mind, AIM offers the following testimony for the Committee's consideration. AIM recognizes that an honest assessment must begin with the recognition that existing insurance markets are impaired by an outdated regulatory system plagued by local impediments that prevent markets from operating in an efficient and optimal fashion. From the structural challenges created by a system of 51 sets of regulatory restrictions to the substantive impact of market regulations that fail to promote prudent risk management, the current system is incapable of efficiently regulating national and global commerce.

Given the importance of the insurance industry to the overall economy, it is critical that Congress lay the foundation for a regulatory system that encourages economic growth and provides consumers with the full range of benefits of an open and competitive insurance market.

An Industry Affected In Every Way By Its Legal History

The insurance regulatory system is unique in its structure and its substance, both of which grow out of a well-chronicled history.

In 1868, the U.S. Supreme Court declared that the entire business of insurance was not subject to Commerce Clause regulation, even when insurance contracts crossed state lines.[3] This precedent held until the Court reversed itself in 1944 in the *Southeastern Underwriters* case,[4] which held the obvious: insurance is interstate commerce—the very sort that led the Framers to replace the Articles of Confederation with a Constitution in order to establish a Federal government with sufficient power to overcome parochial, state by state oversight of trade.

In its decision, the Court quoted no less than a half a dozen Federalist Papers and the collected works of Alexander Hamilton to support the proposition "that there is no object, either as it respects the interests of trade or finance, that more strongly demands a Federal superintendence" than interstate commerce, and that "the regulation of policies of insurance" was of such a character.

[3] Paul v. Virginia, 75 U.S. (8 Wall) 668 (1869).

[4]U.S. v. Southeastern Underwriters, 322 U.S. 533 (1944). .

By changing the constitutional status of insurance overnight, however, the Court threw a hot potato into Congress's lap. With the federal government utterly lacking in experience and expertise relevant to the insurance market, and with its attention focused on the existential challenges posed by World War II, Congress quickly fashioned a minimalist, band-aid solution. The McCarrran-Ferguson Act, in less than 500 words, created a unique and parochial system of regulating interstate commerce which has had everlasting repercussions. Structurally, it preserved the primacy of state regulation by crafting an unprecedented reverse preemption regime with no Federal regulator of insurance. Substantively, it addressed the regulatory issue which triggered the antitrust action brought by the U.S. government in the *Southeastern Underwriters* case by imposing a Federal policy, which heavily incentivized the imposition of state price controls (known more commonly as a limited antitrust exemption).

Sixty-six years later, the existing regulatory system is a complete anomaly. In the 224 years since the Constitution was ratified, in large part, to prevent states from interfering with interstate commerce, insurance remains the only significant part of the economy that continues to be plagued by the same parochial interests the Commerce Clause was intended to supersede. And although price controls have become fully outdated, they have endured, mutated and become a cornerstone of insurance product regulation, frequently characterized by command and control rather than competition.

The lesson is this: just as Congress created this parochial system of regulation, it has both the authority and the constitutional duty to address the structural and substantive effects of its own outdated Federal policy choices.

Structural Issues: An Inconsistent and Inefficient Model

The existing insurance regulatory structure in the U.S. is an antiquated system that relies on a complex web of more than 50 separate state-based regulatory systems, 51 different insurance regulators, and 99 state legislative bodies, each with its own procedures, regulations and legal definitions of insurance. As structured, the ability to develop and implement uniform national standards requires the agreement of 99 legislative bodies and 50 governors – a virtually impossible task. In the modern national marketplace, the structural problem is simple: the existing insurance regulatory system lacks a mechanism to implement effective uniform policies.

Whether it is surplus lines reform, new product innovation and approval, agent licensing, or price controls that sap the benefits of competition, the current patchwork approach to these issues directly impacts consumers by restricting choices and increasing prices. For example, the existing system requires insurers to obtain approval from multiple state insurance departments each time they change prices (including lowering rates), bring a new product to market, make a simple change to a policy form, or license the agents who sell their products. Each variation between the states requires insurers to implement different procedures, forms, training, and other accommodations which are inherently inefficient and costly.

Costly, Inefficient Regulation: Agent Licensing

Under the existing state-based regulatory system, insurance companies must comply with different laws and regulations in each state where they sell insurance.

For example, insurance companies must license and appoint each of their agents in every state where that agent sells insurance. This requires an agent doing business in multiple states to comply with multiple, often duplicative, licensing requirements that include various applications, fees, exams, education requirements, and background checks.

AIM's research suggests that a national company selling personal lines of insurance in all 51 insurance jurisdictions across the country, with agents licensed and appointed to sell insurance in at least two states, spends in excess of $14 million just to license and appoint its agents. In addition, that same company would be required to pay an additional $7 million a year to maintain their agents' licenses.

These figures do not include the significant administrative and personnel costs required to track license renewal dates and report to each state insurance regulator about compliance with continuing education requirements, all of which varies from state to state. Nor does this take into consideration the burden on taxpayers who also cover some of the costs associated with the duplicative regulatory system.

Agent licensing is just one example of the high price our economy and consumers pay for the existing regulatory system.

Modernization: Key to Cutting Insurance Costs, Holly Bakke, National Underwriter Online News Service, August 5, 2011. (Holly Bakke served as the Commissioner of the New Jersey Department of Banking and Insurance from 2002 to 2005.)

The most recent example of the structural challenges created by the existing regulatory system is the implementation of the Nonadmitted and Reinsurance Reform Act of 2010 (NRRA), passed as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203). Designed to simplify and streamline the regulation and taxation of surplus lines, the proposal has been complicated by the introduction and implementation of competing legislative proposals. Today, states have adopted various proposals, while others have ignored the legislative options completely. The result is not the uniformity Congress intended to promote, but rather additional layers of unnecessary complexity.

As this example demonstrates, even if one model can be agreed upon, its implementation is optional and individual states will ultimately decide whether to adopt a model, change it, or reject it outright. Similar examples pervade the entire insurance regulatory system from new product innovation and approval to agent licensing and market conduct examinations. The result is an anti-competitive, duplicative, and inconsistent regulatory system that leads to increased costs, stifled innovation and fewer product choices for consumers.

International Considerations

America's international regulatory presence is equally as fragmented as a result of the existing state-based structure. This is particularly significant when one considers that the U.S. is an outlier in the international arena where most countries have integrated financial service markets that foster competition and guard against global systemic risks.

Two examples highlight how the U.S. is harmed by the current system. First, the existing structure is thought to discriminate unfairly against foreign insurers in internationally accepted trade areas such as market access, most favored nation treatment, consistency with national treatment, and transparency in operation. This, in turn, has resulted in some U.S. insurers concluding that trade barriers are being established for our domestic insurers. For example, an international insurer wishing to do business in all 50 states must, unlike other jurisdictions with centralized or harmonized regulation, qualify for and obtain 50 separate licenses. One 2004 study estimated the cost of each additional license as $8,673.[5]

Second, consider a recent meeting of international insurance regulators where the financial crisis was a main topic of discussion. The United States was not represented by any single entity or person who could adopt and enforce policies, rules, or regulations. Rather, American interests were represented by the National Association of Insurance Commissioners (NAIC), with a regulatory contingent from several states and its director, and the recently designated director of the FIO. At this juncture, neither entity is responsible for regulating insurance, nor is it possible for the NAIC, a voluntary membership organization with no enforcement authority, to overcome the interests of 50 state legislatures and insurance departments to implement a uniform insurance regulatory framework that promotes global competition.

Failed Efforts to Promote Uniform Insurance Regulation

The insurance industry has long recognized the need to address the structural barriers that impede an efficient insurance regulatory system. Absent a Federal insurance regulator, state insurance regulators have attempted to coordinate regulation through the NAIC. However, state participation in the NAIC and its activities is voluntary, and parochial interests often override innovative policy, adding to the complexity of state insurance regulation.

[5] "Industry Overview" Insurance Information Institute. http://www.iii.org/facts_statistics/industry-overview.html

The Interstate Insurance Product Regulation Commission (Interstate Compact): Falling Short

The NAIC has long recognized the need to improve the ability of companies to bring products to market more quickly. In 2004, the NAIC created the Interstate Insurance Compact (Compact), which works to develop national product standards for a select group of life insurance, annuities, disability income, and long-term care products.

While often cited by the NAIC as an example of its ability to improve efficiency and promote uniformity, the benefits of the Compact are incomplete and limited in terms of product scope. Seven years after its creation, nine states, including New York, Florida, and California, have yet to join the Compact. Those nine states represent nearly 30 percent of the US population and one-third of the premium volume for select insurance products nationwide.

The Compact experience underscores the underlying issue with the current regulatory system: the existing regulatory structure lacks a mechanism to implement effective uniform policies from state to state.

www.insurancecompact.org

Despite its best efforts, the NAIC as a voluntary organization composed of sovereign members, is structurally incapable of facilitating efficient, consistent regulation across state lines. According to the *NAIC Model Laws Regulations and Guidelines*, published by the NAIC, of the 200 model laws, regulations, and guidelines adopted by the organization since its inception, only one has been adopted by all 51 jurisdictions.[6]

True Reform Is Impossible Under The Current Legal Framework

Simply put, no matter how much good work the states do through the NAIC, it is impossible to overcome the limitations of a system where each jurisdiction maintains independent power to regulate insurance as it sees fit. The country's founding itself proves this in full: The Articles of Confederation did not and simply could not work. The states, absent a central regulatory system, will always be subject to basic collective action problems which can never be solved in voluntary fashion, regardless of their skill and intentions. States—in good faith—will always, in the name of consumer protection, do things in their own way in key areas. It is the very nature of sovereignty.

[6] It could be argued that the number is higher based on a "substantially similar" standard. While arguably true, and setting aside the definitional problems of what constitutes "substantially similar," the differences in the adoptions invariably means that insurers need to implement different procedures, forms, training and other accommodations to the state variations, thereby minimizing any limited gains in uniformity.

NAIC leaders, even in public statements describing the states' efforts toward uniformity, have necessarily recognized these unchangeable limitations. 2011 NAIC President Susan Voss testified that, "Some states have different opinions on how they want to protect their consumers, what products they want to be allowed in their states, and that is always going to be a challenge for us as state regulators… We try and work through those [concerns] as best we can on a state by state basis."[7] Incoming 2012 NAIC President Kevin McCarty recently said that the NAIC has "centralized and standardized the regulatory system as much as possible."[8] The caveat "*as much as possible*" explicitly recognizes the inherent limitations of a state based system. The states are, and will always be, naturally cabined by the severe limits of voluntary collective action.

Justice Black's majority opinion in the Southeastern Underwriters case, unassailable for its legal conclusions if not its practical import, nicely describes and analyzes the case for Federal regulation of interstate commerce:

- "This business is not separated into 48 distinct territorial compartments which function in isolation from each other. Interrelationship, interdependence, and integration of activities in all the states in which they operate are practical aspects of the insurance companies' methods of doing business.

- "The decisions which that company makes at its home office ... concern people living far beyond the boundaries of that state.

- "The power confided to Congress by the Commerce Clause is declared in the Federalist to be for the purpose of securing the 'maintenance of harmony and proper intercourse among the states.'"

Without a mechanism in place to bring national order to the system, it is axiomatic that the problems described in this section, and the total disconnect of the regulatory system from the national/global business that it oversees, will only grow.

What, then, are the options for those who believe that the status quo is unacceptable?

Only a congressionally-mandated solution could effectively address the collective action problems described herein. We do not believe that the states can reach such a result on their own. A refusal to voluntarily relinquish control is the intractable problem underlying the current system's ills.

7 *Insurance Oversight: Policy Implications for U.S. Consumers, Businesses, and Jobs.* Hearing before the House Subcommittee on Insurance, Housing and Community Opportunity. 112th Congress (2011) (testimony of Susan Voss).

8 Holm, Erik. "Fed Insurance Office holds meeting, deadline near," Wall Street Journal, Money Watch. http://www.marketwatch.com/story/fed-insurance-office-holds-meetings-deadline-near-2011-12-05. December 5, 2011.

While we do not at this stage of the process offer a fully formed alternative, we do offer one important observation, respectfully made: Congress should not automatically and reflexively turn to the NAIC—often looked to as a potential national regulatory, quasi-regulatory body or standard setter (such as in the recent Patient Protection and Affordable Care Act (P.L. 111-148), other Federal legislation, or through national standards)—as the implementer of national solutions, at least not as the NAIC is currently constituted.

The NAIC has a rich and productive history of service to its members and thus indirectly to the citizens whom those members serve—one which we, as former active members, treasure and celebrate rather than impugn. But, unlike its component members and the departments which they head—the NAIC is not a public body, and its responsibilities and accountabilities are murky. It is a private corporation, not subject to open records or open meeting laws, a status which it fiercely guards. Its Policy Statement on Open Meetings is, as a practical matter, irrelevant—any meeting can be closed purely by the chair's discretion, and hundreds of hours of its most important meetings (commissioners' conferences, roundtables, executive committee and zone retreats) are always closed. Its $70 million annual budget is not subject to public oversight. These seminal attributes are questioned by industry members and consumer advocates, especially when the NAIC steps into roles that make its actions more binding—which is precisely what will be required in any solution designed to make the regulatory system less parochial.

The NAIC is commonly used as shorthand in Washington, D.C. for the states, and it may well provide an attractive mechanism with institutional knowledge and tools to impose necessary order by compulsion to the chaotic state system.[9] We feel, however, that it cannot and should not be properly empowered via further codification at the Federal level without a corresponding review and consideration of whether its status as a non-governmental, private corporation is commensurate with such a grant, and if not, what sort of changes might be necessary before it can be.

Substantive Issues: Federal Policy Choices And Misplaced Market Regulations

Beyond the structural impediments created by the existing regulatory system, the current regulatory scheme also creates significant substantive policy challenges that distort the very purpose of insurance: to spread and manage risk.

Any regulatory system, to be successful, must be tethered to the nature and purpose of the product itself. As the Supreme Court has recognized, "the legislative history of the McCarran-Ferguson Act strongly suggests that Congress understood the business of insurance to be the underwriting and spreading of risk."[10] Specifically: "[O]ne of the early House reports stated: 'The theory of insurance is the distribution of risk according to hazard, experience, and the laws of averages."[11] Thus, "The companies have been said to be the mere machinery by which the

[9] The NAIC's accreditation system for solvency regulation has been generally well received and effective.

[10] *Group Life v. Royal Drug*, 440 U.S. 205 (1979).

[11] Id.

inevitable losses ... are distributed," and their "efficiency, therefore, and solvency, are of great concern."[12]

However, much of the market regulation today—including price controls intended to artificially compress rates and risk classification restrictions based on social or other judgments (beyond prohibitions on classification according to race, religion, or national origin)—distort the purpose of insurance by severely restricting insurers' risk allocation practices.

Price Controls Are Counterproductive In The Modern Marketplace

Perhaps the best example of the unintended consequences that result from misplaced market regulations are state price controls. Originally developed as a tool for state regulators to maintain adequate rates and ensure company solvency, rate regulations more recently have been transformed into a parochial mechanism for suppressing rates.

Lessons Learned: The New Jersey Auto Experience

For decades, New Jersey had one of the most expensive and least competitive auto insurance markets in the United States. The response of lawmakers for years had been to pass rate restrictions, including a mandatory 15 percent rate rollback, and to require insurers to provide coverage to all but the very worst drivers.

This market intervention resulted in rates that did not reflect the risks insurers were undertaking. In fact, between 1992 and 2002, more than 40 insurers left the auto market as a result of the state's regulatory environment and the high cost of doing business. The result was an availability crisis in which even the best drivers were unable to find coverage. Ironically, the years of rate regulations designed to benefit policyholders ultimately hurt consumers by driving insurers out of the market, limiting product choices, and inflating costs.

In 2003, New Jersey enacted a number of reforms designed to reduce the regulatory burden on insurers, attract insurance providers, and increase competition. The reforms not only restored competitive balance and provided consumers with new choices, but also lead to a significant decline in premiums. In fact, New Jersey drivers benefited from more than $86.6 million in rate reductions and refunds resulting from competition. By 2006, 20 companies had returned to New Jersey and 75 percent of the state's drivers were paying less for auto insurance.

Experience demonstrates that competitive markets, not government price controls, provide consumers with more and better choices.

"In the Driver's Seat: A report on the status of auto insurance reform in New Jersey," New Jersey Department of Banking and Insurance, www.state.nj.us/dobi/pressreleases/040109report.pdf.

[12] *German Alliance v. Lewis* 233 U.S. 389 (1914).

Rather than permitting private markets to function and allow insurers to compete, rate regulations often chase private capital out of the market and prevent consumers from realizing the benefits of competition. State price controls are fatally flawed at the outset because, as the Supreme Court recognized, "hazard, experience, and the laws of averages ... are not within the control of insuring companies in the sense that the producer or manufacturer may control cost factors."[13]

At the most basic level, state-based rate policies discourage companies from lowering rates out of concern that rate restrictions will prevent companies from charging adequate rates in the future. In extreme cases, significant price controls can result in a full blown market meltdown such as in the New Jersey auto market in the 1990s. Across the spectrum, when states misapply the tool of rate regulation against its original purposes of rate adequacy and promoting solvency in, and instead use it to artificially suppress premiums, their attempt to bend the most simple laws of economics ultimately leads to higher prices and fewer consumer options.[14] Conversely, more rate freedom correlates to higher levels of competition in which insurers compete to provide consumers with the best products at the best prices.[15]

Controls Which Impede Risk Classification Are Inefficient And Ineffective

Price controls are not the only example of regulatory practices that interfere with the very nature of the product. State regulations frequently graft social restrictions on the evaluation and classification of risk, extending protected classes far beyond unacceptable groupings based on race, national origin, or religion.

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[13] *Group Life v. Royal Drug*, 440 U.S. 205 (1979).

[14] The size of residual insurance markets is one indicator that demonstrates the extent to which current state market regulations distort open and competitive markets. In those areas where state price controls prevent insurance companies from charging adequate rates, insurers tend to avoid writing policies because the insurer cannot profitably write the risks. As more consumers find themselves unable to purchase insurance in the open market, they are forced to rely on a growing residual market. Conversely, as regulators trust the competitive market to properly prices risks, insurance becomes more widely available and the residual market declines.

This was the case in South Carolina, where in 1998, the residual market for auto insurance accounted for 26 percent of all auto insurance premiums in the state—the highest percentage in the nation that year. However, after the implementation of a competitive market-based approach to pricing, the percentage of auto insurance in South Carolina's residual market dropped to 8.6 percent in 1999. By 2008, South Carolina's residual auto market was virtually eliminated.

[15] Scott Harrington, Insurance Deregulation in the Public Interest, AEI-Brookings, 2000.

When Regulation in the Name of Consumer Protection Results in Consumer Harm

In an effort to exercise oversight of the insurance industry's risk evaluation responsibilities, the Louisiana State Legislature enacted legislation that constrains the industry's ability to assess its own risk. In 1992, the Louisiana State Legislature enacted a "three-year rule" designed to protect consumers by mandating the renewal of homeowners' insurance policies and prohibiting the increase of deductible policies after three years, with the exception of several very specific circumstances.

The unintended consequences of the legislature's attempt at consumer protection resulted in industry adjustments that changed how insurance companies conduct their business. For example, some companies formed new entities that began issuing new policies. While this allowed the new entity to refuse to renew a policy because it was not constrained by the three year provision, companies remain saddled with their old book of business, and policies issued by the new company were only free from this restriction for just three years. In effect, insurers are being subject to adverse selection and this drives up the rates of carriers that have these older risks.

Other companies instituted a variable percentage deductible on new policies as a mechanism to compensate for the constraints imposed by the legislation. This approach allows them to avoid overexposure to the risks associated with their older policies that were created when the legislature imposed the nonrenewal provisions. This has resulted in homeowners having to pay a hurricane deductible based on a percentage of the value of the home.

After Hurricane Katrina, many insurers began increasing their percentage deductibles, in some cases, up to as much as 5% of the value of the property. In 2008, after Hurricane Gustav, many residents in non-coastal Louisiana were faced with hurricane deductibles for the first time.

While intended to protect the consumer, the three year rule ultimately requires insurance companies to renew all policies without adequately assessing the risks. As a result, insurers must renew older, less desirable policies, which at the end of the day, limits their capacity to take on new policies.

The unintended consequence of the Legislature's attempt to protect consumers has been to impede the insurance industry's ability to match price to risk, ultimately driving up costs to consumers and limiting competition.

Whether it be actuarial review based on credit-based insurance scoring, claims history, or other statistically relevant factors, the frequent negative responses of regulators to practices that are consistent with the fundamental purposes of insurance only impede the innovation that will allow insurers to keep up with the risks posed by their customers.

As described herein, product controls which are designed to prevent risk-based underwriting and rating reduce accuracy and efficiency of risk classification—the central purpose of insurance. This distorts the market in unintended ways—harming rather than helping consumers.

Misplaced Market Regulation: The Consequences of a Federal Policy Choice

It is important to recognize that both the substantive challenges created by state regulation and the structural challenges facing the existing regulatory system are also practical consequences of the McCarran-Ferguson Act. Specifically, McCarran-Ferguson's limited antitrust exemption for the business of insurance[16] was intended to be, and remains, a Federal policy favoring, incentivizing, and practically directing the enactment of State price controls.[17]

However, it is critical to understand that the price controls which resulted from McCarran-Ferguson were price floors serving as a proxy for solvency regulation, by disabling competition, avoiding rating wars, and ensuring price adequacy. As Senator Ferguson explained, "we cannot have open competition in fixing rates on insurance. If we do, we shall have chaos. There will be failures, and failures always follow losses."[18]

The entire rationale for rate regulation rests on the premise that the market is non-competitive, which was the case in the first half of the 20th century. As the Supreme Court explained: "We may venture to observe that the price of insurance is not fixed over the counters of the companies by what Adam Smith calls the higgling of the market, but ... has led to the assertion that the business of insurance is of monopolistic character."[19] Lack of ruinous competition was desired by the authors of McCarran-Ferguson in 1945.

Today, the insurance market has been transformed. Solvency is regulated by sophisticated financial tools, not by disabling price competition. And on the market side, consumers actively shop for price, and the most ruthless regulator of all—competition—drives prices down where not prevented from doing so by misplaced regulation.

Under McCarran-Ferguson the states also impose other restrictions on risk-based classification, grafting social judgments into unfair discrimination laws, interfering with the basic rule that, other than the consensus protected classes of race, national origin, and religion, actuarially sound risk factors are equitable.

The traditional rule is simple: "The intended result of the [underwriting and rating] process is that persons of substantially the same risk will be grouped together, paying the same premiums,

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[16] *See* 15 U.S.C. 1012(b), declaring that the Sherman, Clayton, and FTC Acts are "applicable to the business of insurance" only "to the extent that such business is not regulated by State law."

[17] *See* Spencer L. Kimball and Ronald N. Boyce, *The Adequacy of State Insurance Rate Regulation: The McCarran-Ferguson Act in Historical Perspective*, 56 Mich. L. Rev. 545, 566 (1957-58) ("The historical contribution of the McCarran Act seems to be the formulation of a federal public policy that real regulation of insurance rate making at the state level is preferable."); John S. Hanson et al, *Monitoring Competition: A Means of Regulating the Property and Liability Insurance Business* 220-221 (NAIC 1974) ("Under the conditions established by Sec. 2(b) of the McCarran Act, both the states and the industry had a community of interest to move expeditiously to develop state [rate] regulation.").

[18] 91 Cong. Rec. 1481 (1945).

[19] *German Alliance v. Lewis* 233 U.S. 389 (1914).

and will not be subsidizing insureds who present a significantly greater hazard."[20] But by combining state sovereignty with a public policy encouraging extreme control over the insurance product, McCarran Ferguson has ended up lagging behind the market, which has transformed from collusive to competitive since 1945.

Insurance regulation under McCarran-Ferguson threatens to turn insurance companies into something that they are not—vessels of social policy rather than "the mere machinery by which the inevitable losses ... are distributed."[21] Actuarially based risk classification—and potentially carrier solvency—suffers as a result. Thus, a full understanding of all of the ramifications of the policy choices in McCarran-Ferguson—not just the primacy of state regulation, but the codified preference for a particular kind of regulation (severe controls over the product which are fundamentally mismatched to the market 66 years later)—should represent the starting point of a statutorily mandated study on how to modernize and improve the system of regulation.

Principles for Insurance Reform

As this report details, the existing insurance regulatory system is the product of an outdated Federal policy choice—a choice that created both structural and substantive challenges that limit competition, stifle innovation, and ultimately prevent consumers from realizing the full benefits of this powerful economic driver. Just as Congress created the present system in response to the challenges of the time, Congress has the authority and duty to modernize the regulatory system to meet the challenges of the 21st century global economy.

AIM would be remiss if, after describing why the existing insurance regulatory system is ineffective, it did not provide its vision of a framework for a robust insurance sector. As history has shown much of the insurance regulatory debate to date (which has focused on whether Federal or state agencies should regulate) has not been productive. AIM encourages the Committee to consider these fundamental principles in assessing and developing a modern insurance regulatory regime:

Effective Regulation Should Emphasize Sound Risk Management, Solvency, and Financial Stability

The primary objective of insurance regulation is to ensure solvency. Effective solvency regulation protects consumers and insurers by assuring that companies are able to pay their claims and provides the confidence to individuals, businesses, and communities to invest, create wealth, and promote economic growth.

Effective Regulation Should Protect the Consumer

Insurance regulation should ensure consumers are treated fairly in all insurance transactions. In addition to emphasizing insurer solvency, which is the ultimate consumer protection, robust

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[20] *Life Ins. Ass'n of Massachusetts v. Commissioner of Ins.*, 403 Mass. 410 (1988).

[21] *German Alliance v. Lewis* 233 U.S. 389 (1914).

consumer protection requires the effective oversight of insurers' business practices including marketing, underwriting, and claims payments to ensure compliance with consumer protection laws.

Effective Regulation Should Promote Competitive Markets

Competitive markets provide consumers with a broader array of products and services. Insurance regulation should promote competition to encourage market driven premium rates, to accommodate innovation, and the delivery of new products. Prices cannot be excessive in a competitive market. This includes the elimination of unnecessary barriers to market entry and exit. Market exit restrictions are every bit as much of a barrier to entry as direct entry restrictions.

Effective Regulation Should Be Uniform

Insurance companies should be subject to nationally consistent rules and uniform standards governing policy forms and rate adequacy, licensing, market conduct, and solvency oversight in order to maintain strong competitive markets and the efficient delivery of products to consumers. National standards cannot be established as a floor, allowing states to enact varying standards. Also, regulation should be administered efficiently and uniformly consistent with applicable laws.

Effective Regulation Should Recognize the International Nature of the Marketplace

Insurance regulations must ensure a competitive position for the United States in the international marketplace. They must encourage foreign investment, while ensuring domestic companies are able to compete abroad, so that consumers can benefit from more and affordable product choices.

Effective Regulation Should Promote Product Innovation

Insurance regulation should facilitate innovation by encouraging insurers to develop and introduce new products that meet the evolving needs of consumers.

Effective Regulation Should be Transparent

Transparency is critical to a competitive market. Insurance regulations should be developed in an open environment and made easily available to the public. Regulatory objectives should be clearly defined and effectively communicated to all stakeholders. In addition, proposed regulations should be given sufficient time for interested parties to comment and those comments should receive sufficient justification for their adoption or rejection.

Effective Regulation Should Provide Exclusive Prudential Regulation

Insurance providers should be subject to the exclusive domain of one regulatory body or system. Insurance modernization should seek to eliminate duplicative or redundant regulation by multiple regulatory bodies. As a result of the Dodd-Frank Act, this is becoming an increasing problem with the emergence of enhanced Federal regulation in addition to state regulation of insurers and insurance holding companies.

Effective Regulation Should be Targeted and Proportional to the Perceived Problem or Risk

Effective insurance regulation should balance the costs and benefits to consumers and businesses of any regulatory action. As such, effective regulation should be narrowly focused on the perceived problem or risk and should be designed to minimize unintended consequences that could result from implementation.

Effective Regulation Should Be Applied Universally To All Lines of Insurance

Insurance modernization should apply to all lines of life, property/casualty insurance, and reinsurance and should accommodate all corporate forms (i.e., stock, mutual, risk-exchange, and fraternal companies). This would avoid additional operational costs and inefficiencies for multi-line insurers, and provide that all insurance consumers have access to a broad array of product choices at appropriate prices.

Thank you for holding this important hearing and the opportunity to comment. AIM looks forward to working with the Committee to inform its efforts to modernize the insurance regulatory system to better, serve consumers, increase competition, and drive economic investment.

[INSURED RETIREMENT INSTITUTE]

Senate Committee on Banking, House, and Urban Affairs
Subcommittee on Securities, Insurance, and Investment

Hearing on "Streamlining Regulation, Improving Consumer Protection and Increasing Competition in Insurance Markets"

Testimony of Catherine Weatherford
President and CEO, Insured Retirement Institute

March 19, 2013

INTRODUCTION AND SUMMARY OF TESTIMONEY

Chairman Tester, Ranking Member Johanns and Members of the Subcommittee, my name is Cathy Weatherford and I am President and CEO of the Insured Retirement Institute (IRI). I am pleased to provide our perspective on the National Association of Registered Agents and Brokers Reform Act of 2013 (NARAB II). I commend Chairman Tester, Ranking Member Johanns, and Co-Sponsors for introducing this important piece of legislation and holding this hearing, and I appreciate the opportunity to provide this testimony to the Subcommittee.

IRI is the only national trade association that represents the entire supply chain for the insured retirement strategies industry. We have over 500 member companies, including major insurance companies like TIAA-CREF, Prudential and MetLife, banks like Wells Fargo and JPMorgan Chase, broker-dealers like Morgan Stanley, Merrill Lynch, LPL Financial, Raymond James and Edward Jones, and asset management companies like AllianceBernstein, BlackRock, and PIMCO. Our member companies represent more than 97% of annuity assets, and include the top 15 distributors ranked by assets under management. Our members are represented by more than 150,000 registered financial advisors who serve clients in multiple states and communities across the country, and therefore, IRI brings a perspective from Main Street America to the Congress today.

During my tenure as CEO of the National Association of Insurance Commissioners prior to becoming President and CEO of the Insured Retirement Institute, we first developed the NAIC Producer Database (PDB) and ultimately the National Insurance Producer Registry (NIPR), which now processes resident and non-resident licenses and company appointments nationally and facilitates state compliance with the NARAB provisions contained in the Gramm Leach Bliley Act ("GLBA"). As a result, I know first-hand the current challenges of the multi-state insurance producer licensing system. My testimony today will address three (3) key points:

1. Americans today face unprecedented retirement income challenges as few consumers are covered by traditional pension plans and most are likely to live longer than prior generations. Insured retirement lifetime income products play a vital and unique role in helping consumers protect against the risk of outliving their assets;
2. Current regulatory requirements are viewed as a major impediment to financial advisors' ability to sell lifetime income products to a consumer population looking for guaranteed lifetime income during retirement; and
3. A first step to ease the regulatory burdens is legislation to create the National Association of Registered Agents and Brokers (NARAB II), which will benefit consumers and financial advisors by creating an efficient and cost-effective one-stop, national insurance licensing process.

America's Retirement Income Crisis, and the Role of Insured Retirement Products

The shift from defined benefit to defined contribution plans, longer life spans, and the rising costs of health care are among the challenges that will put significant savings and retirement income burdens on the shoulders of individual consumers, in particular middle-income Americans. According to the Employee Benefits Research Institute's 2011 Retirement Confidence Survey, nearly half of the Boomers, over 35 million Americans, are "at risk" for inadequate retirement income, not having sufficient guaranteed lifetime income. According to the Mortality Table from Society of Actuaries, a 65-year-old male has a 30 percent chance of living to 90, a 65-year-old female has a 42 percent chance. A couple age 65, has a 60 percent chance of one or both being alive at 90. These realities underscore the critical importance of a regulatory environment that provides consumers access to products that meet their need to protect against the risk of outliving their assets, also known as longevity risk. Insurance companies, distribution partners, and financial advisors who work with clients in multiple states across the country are the only providers of guaranteed lifetime income products.

Legislative and Regulatory Obstacles to Consumer Access to Lifetime Income Products

The regulatory environments in which insurers, distribution firms and financial advisors operate have a significant impact on the industry's ability to meet the needs of American citizens. Based on the results of IRI's study released this week regarding annuities and the regulatory environment, it is clear that financial advisors view state and federal regulations as a major impediment to the sale of annuities. Complying with mandated requirements strains time and resources, and negatively affects consumers' experiences by disrupting and elongating the sales process. State insurance licensing regulations are particularly burdensome. The IRI research found that most financial advisors, 83 percent, are licensed in multiple states, and the redundant processes are viewed as a burden to financial advisors. According to IRI's findings, the average financial advisor spends nearly 22 hours per year to complete state insurance continuing education requirements and licensing renewals to sell annuities—compared to spending just under 16 hours to complete federal continuing education requirements and licensing renewals to sell all other types of investment products. In addition, seven in 10 broker-dealers believe that state insurance licensing can be ambiguous or poorly defined, and eight in 10 broker-dealers believe that state insurance regulations are duplicative. *See* Attachment for the full IRI Report titled, "Broker/Dealers, Financial Advisors and Clients: Annuities and The Regulatory Environment."

NARAB II Would Benefit Consumers and Financial Advisors

NARAB II would establish a one-stop, national licensing clearinghouse for financial professionals and distribution firms operating in multiple states. It would enable financial professionals who have passed background checks in their home state to apply for NARAB membership, allowing them to conduct business in other jurisdictions and bypass the burden of duplicative state licensing requirements across multiple states. This common-sense legislation will promote the efficient and cost-effective licensing of hundreds of thousands of financial advisors across the country through an improved and streamlined licensing process, while maintaining important consumer protections and retaining authority for the states to regulate the marketplace.

TESTIMONY OF CATHERINE WEATHERFORD

Introduction and Background

As you may know, I have more than 30 years of regulatory experience, including over half of that time as an elected Insurance Commissioner and Insurance Department staff for the State of Oklahoma. Prior to joining IRI, I served as CEO of the National Association of Insurance Commissioners for 12 years, where I worked with insurance commissioners from each state to streamline, to the furthest extent possible, insurance regulatory processes to help agents and financial advisors and to increase consumer access to products they need. As a part of that effort, during my tenure at the NAIC, we first developed the NAIC Producer Database (PDB) and ultimately the National Insurance Producer Registry (NIPR), which now processes resident and non-resident licensing and company appointments nationally and facilitates state compliance with the NARAB provisions contained in the Gramm Leach Bliley Act ("GLBA"). As a result, I know firsthand the current challenges of multi-state insurance producer licensing.

IRI exists to vigorously promote consumer confidence in the value and viability of insured retirement strategies, bringing together the interests of the industry, financial advisors and consumers under one umbrella. Our mission is to: encourage industry adherence to highest ethical principles; promote a better understanding of the insured retirement value proposition; develop and promote best practice standards to improve value delivery; and advocate before public policymakers on critical issues affecting insured retirement strategies and the consumers that rely on our members' guarantees. IRI is the only national trade association that represents the entire supply chain for the insured retirement strategies industry. We have over 500 member companies, including major insurance companies like TIAA-CREF, Prudential and MetLife, banks like Wells Fargo and JPMorgan Chase, broker-dealers like Morgan Stanley, Merrill Lynch, LPL Financial, Raymond James and Edward Jones, and asset management companies like AllianceBernstein, BlackRock and PIMCO. Our member companies represent more than 97% of annuity assets, and include the top 15 distributors ranked by assets under management. We have more than 150,000 registered financial advisors across the country, and therefore, we bring a perspective from Main Street America to the Congress today.

After my many conversations with these financial advisors, I have developed a deep level of appreciation for the long-standing relationships advisors have with their clients and friends—lasting ten, twenty or even forty years. Our financial advisors consider that relationship to be a sacred trust and as such, they are intensely committed to helping their clients reach their retirement income objectives, which involves a series of the most significant financial decisions a person ever makes over a very long lifetime. As a result, these financial advisors want to continue providing services to their clients in the most efficient manner possible when they move to a new state.

America's Retirement Income Crisis and the Role of Insured Retirement Products

Seventy-nine million Baby Boomers today face immediate and unprecedented retirement income challenges—challenges that simply did not exist in earlier generations. Individuals are living longer than those of earlier generations. Our research has shown that, between 2000 and 2010, the number of 60-64 year old Americans has increased by more than 50%, from 10.5 million to more than 16.2 million. According to the Mortality Tables from Society of Actuaries, a 65-year-old male has a 30 percent chance of living to 90, a 65-year-old female has a 42 percent chance. A couple age 65, has a 60 percent chance of one or both being alive at 90. Given people are living longer, savings must last through retirements that can span 20-30 years or more.

As the population in the United States ages and more Boomers retire or approach retirement, concerns about financial preparedness remain high, according to industry reports. The combination of longer life spans and a declining birth rate mean the ratio of workers to retirees will continue to decline, increasing pressure on public and private pensions systems, and health care systems.

According to the Employee Benefits Research Institute's 2011 Retirement Confidence Survey, nearly half of the Boomers, over 35 million Americans, are "at risk" for inadequate retirement income, not having sufficient guaranteed lifetime income. Just as concerning, nearly half (45%) of Generation X (ages 36-45) are "at risk" for inadequate retirement income.

Compared to prior generations, Boomers and Generation Xers bear more of the risk and responsibility for retirement savings and income generation. Traditional defined benefit (DB) pension plans in the private sector are increasingly being frozen or terminated; virtually all replacement and new plans are defined contribution (DC) plans, such as 401k plans. Historically low personal savings rates, coupled with general insufficiency of DC plan savings, mean many retirees will have to consider alternative sources of retirement income, such as working in retirement and tapping into home equity.

The shift from DB to DC plans has shifted much of the burden for retirement security from employers to individuals. Employees have to make decisions about whether to participate in a DC plan, how much to save, and how to invest. At retirement, participants have to figure out how to make their nest egg last for life – while managing the risks that go along with that.

Annuities are the only financial instruments available today, other than Social Security and pensions, that guarantee a lifetime stream of income during retirement. With the proper use of annuity products and other retirement savings vehicles, retirees can be assured they will not outlive their assets and benefit significantly by having the ability to increase their current income.

Consumers therefore need to access to these products through financial advisors who must be licensed in every state where their clients reside. However, redundant and burdensome regulations impede financial advisors' willingness and ability to sell these products, thereby decreasing consumer access to these needed products.

Legislative and Regulatory Obstacles to Consumer Access to Lifetime Income Products

Regulatory obstacles continue to inhibit Americans' access to much needed financial advice and lifetime income products. IRI's research shows that working with a financial advisor greatly increases retirement confidence. Among Baby Boomers who consulted with a financial advisor, 42.8% are extremely or very confident, compared with 32.3% of those who did not. Among individuals in Generation X who consulted a financial advisor, 47.6% are extremely or very confident compared with 28.9% of those who did not.

IRI recently conducted a research study as part of an initiative to identify regulatory barriers that impede financial professionals' ability and willingness to sell lifetime income products. This study, released this week , found that financial professionals – 83% of whom are licensed in multiple states – view the state insurance licensing process as a regulatory obstacle that may impede the sale of retirement income products.

Nearly half of the financial professionals we surveyed indicated that they would like to sell more annuities, but do not because of time requirements and resource constraints. Approximately 80% of these advisors believe it takes considerable more time to sell annuities compared to other investment products . On average, advisors with insurance licenses in multiple states already spend more than 20 hours per year renewing and maintaining their licenses, and almost 35 hours completing required product training.

The burdens associated with multi-state licensing are widespread. Nearly 85% of all advisors are licensed in two to ten states. Furthermore, 30% of advisors in firms with 10 to 499 advisors, and 47% of advisors in firms with 500 or more advisors, are licensed in 21 or more states. It should come as no surprise that eight in 10 financial professionals say state insurance regulations are duplicative. *See* Attachment for the full IRI Report titled, "Broker/Dealers, Financial Advisors and Clients: Annuities and The Regulatory Environment."

Benefits of NARAB II for Consumers and Financial Advisors

As a first step toward easing these impediments, we believe Congress should enact NARAB II, which would create the National Association of Registered Agents and Brokers (NARAB), a one-stop national licensing clearinghouse for financial professionals operating in multiple states. Time spent on redundant licensing requirements is time not spent servicing clients and focusing on their needs. This bipartisan, common-sense legislation would ease these unnecessary burdens by promoting the efficient and cost-effective licensing of hundreds of thousands of financial advisors across the country, while maintaining important consumer protections. IRI urges Congress to support and advance this legislation to establish a streamlined licensing process, while retaining states' authority to regulate the marketplace.

By way of background, the Gramm-Leach-Bliley Act, also known as the Financial Services Modernization Act of 1999 (GLBA), contains provisions requiring state insurance regulators to meet federal statutory requirements affecting insurance agent licensing, and provides for establishing a new organization named the National Association of Registered Agents and Brokers (NARAB) if the states fail to achieve the goals set forth in the Act. The Act provided two options for the States to avoid creation of a new NARAB organization: (1) recognize and accept the licensing procedures of other states on a reciprocal basis so agents will not be required to meet different standards in each state, or (2) adopt uniform laws and regulations regarding non-resident agent licensing. In August 2002, the NAIC determined that it had met the non-resident producer licensing reciprocity requirement and, as a result, NARAB was never created.

The NAIC has expended an enormous amount of time, resources and effort on the issue of agent licensing and has made progress in many areas and with many states with regard to reciprocity and uniformity in agent licensing. However, because of continuing challenges and structural barriers at the state level, passing NARAB II is the only way to achieve the goal of a one-stop, national licensing system that both the industry and regulators have envisioned and want.

All stakeholders, including state regulators, have agreed that uniformity and efficiency, not reciprocity, were the ultimate goal of the GLBA's NARAB provisions. Despite commendable focus and good faith efforts, neither the goal of reciprocity nor uniformity has been reached. Some of the reciprocity and uniformity barriers include: additional fingerprinting requirements; surplus lines bond requirements; certain appointment requirements for agents and business entity (agencies); duplicative document requirements; underlying life license requirements prior to the issuance of a variable life license; duplicative age verifications, inconsistent terms of licensure for residents and non-residents; and trust account requirements, all of which the NAIC acknowledges as being inconsistent with the GLBA reciprocity requirements.

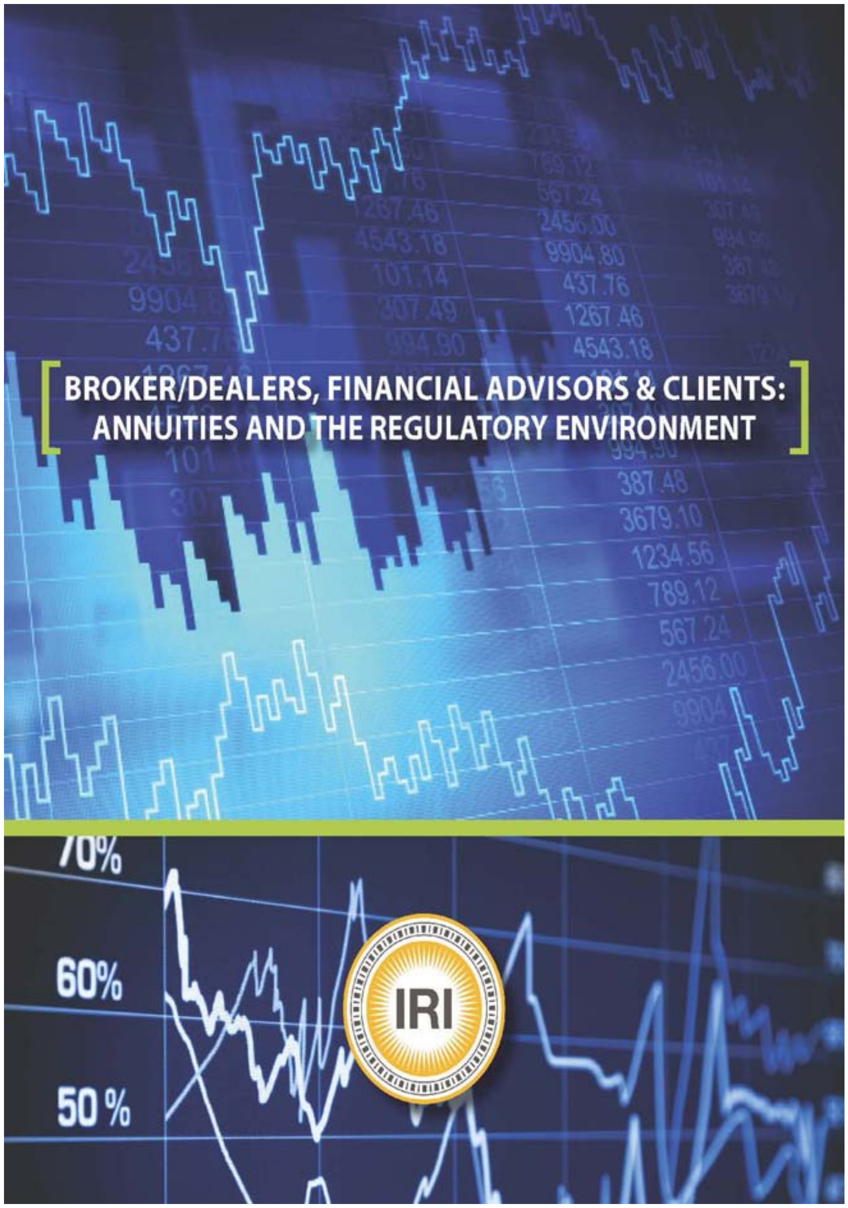
In addition to these concerns, while seemingly minor when viewed alone, operational inefficiencies in multiple states compound to create very significant burdens on licensees, as well as delays that put licensees in the position of not being able to write new business for their clients. A significant number of states are simply understaffed because of budget constraints or have difficult licensing requirements that substantially delay the initial and renewal licensing process. Corporate license affiliations still vary greatly among the states that require them. Manual paper processes, which require paper applications and checks and utilize paper renewal notifications, versus online processes, greatly slows and complicates the licensing process, especially for national broker-dealers and banks that manage this process in all 50 states.

NARAB II would amend the GLBA and establish NARAB to serve as a clearinghouse for financial advisors who wish to do insurance business in multiple states. The bill preserves the consumer protection and enforcement powers of states while simplifying multistate licensing for producers. While we support continued work by the NAIC and the states to reach this goal, we see little hope of overcoming structural barriers in the states, despite more than 10 years of valiant efforts. As a result, we believe adoption of NARAB II by the Congress is necessary to expedite and assure the goal of an efficient national insurance licensing system.

Conclusion

Thank you again for the opportunity to provide this testimony. I hope you will find it useful. IRI would welcome the opportunity to work with Congress and the Administration in the future as you consider additional legislative and regulatory changes to enhance regulatory efficiencies and to help all Americans attain retirement financial security.

Attachment: IRI Research Report titled, "Broker/Dealers, Financial Advisors and Clients: Annuities and The Regulatory Environment."


BROKER/DEALERS, FINANCIAL ADVISORS & CLIENTS:
ANNUITIES AND THE REGULATORY ENVIRONMENT
IRI

84%

of annuity producers reported having more client discussion focused on retirement income planning.

CONSUMER DEMAND FOR LIFETIME INCOME

Consumer demand for lifetime income continues to rise. The Insured Retirement Institute's study conducted by Cogent Research in 2012 found that 71% of financial advisors reported having a client request to purchase an annuity in the past year, and 84% of annuity producers reported having more client discussion focused on retirement income planning. In fact, IRI research shows that Boomers who own annuities have a higher confidence in retirement expectations, with 9 out of 10 believing they are doing a good job preparing financially for retirement.

71% of financial advisors reported having a client request to purchase an annuity in the past year, and 84% of annuity producers reported having more client discussion focused on retirement income planning.

Increasing demand for lifetime income stems from the unprecedented retirement income challenges facing consumers today including the shift from defined benefit pension plans to defined contribution plans as well as longer life spans. As recent as 1985, there were about 114,000 private-sector defined benefit plans in the United States, according the Pension Benefit Guaranty Corporation. In 2012, there were less than 26,000 defined benefit plans. At the same, Americans continue to live longer. In 2011, a person aged 65 could expect to live six years longer compared to their cohorts in 1940. Research shows that for a 65 year old married couple, there is a nearly 60 percent chance one will live to age 90; and still a nearly 30 percent chance one spouse will live to age 95.

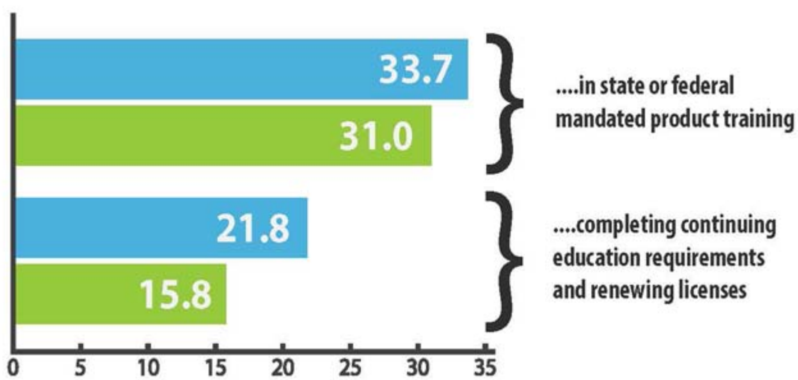
As a source of lifetime income, annuities have been identified as a means to address numerous risks facing retirees in this new retirement paradigm. Meeting this demand and addressing the retirement income challenges in America will require the broker-dealer and financial advisor community to rise to the occasion. As a step in reducing barriers to attaining lifetime income, this study is intended to identify the legislative and regulatory obstacles that impede broker-dealers' ability and financial advisors' willingness to sell lifetime income products to a consumer population looking for guaranteed lifetime income.

[TIME AND RESOURCE OBSTACLES]

Nearly half of broker-dealers, 46%, say they would like to sell more annuities. Yet, time requirements and resource constraints appear to be a hurdle toward this outcome.

83% of broker-dealers and **76% of advisors** believe that it takes considerably more time and effort to sell an annuity compared to a mutual fund.

HOURS PER YEAR THE AVERAGE ADVISOR SPENDS.....



55.5 Total Hours To Sell Annuities

46.8 Total Hours To Sell Other Investments

STATE REGULATIONS AND LICENSING

Eight in 10 broker-dealers believe that state insurance regulations are duplicative.

This study shows that **83% of advisors are licensed in two to 10 states.**

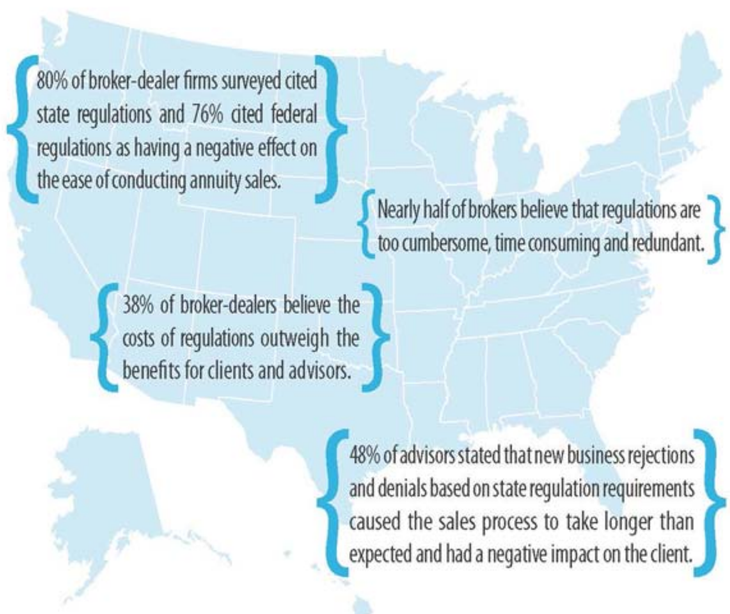
In firms with 500 or more financial advisors, **47% have licenses in 21 or more states.**

In firms with 10 to 499 advisors, **30% of advisors have licenses in 21 or more states.**

Seven in 10 broker-dealers believe that state insurance licensing can be ambiguous or poorly defined. In addition, 75% of broker-dealers stated that it is difficult to stay current with state mandated annuity training requirements.

REGULATORY BARRIERS IMPACTING CONSUMERS

State regulations have been found to have a slightly greater negative impact on financial advisors than federal regulations—both of which create disruptions to business and negatively affect clients. In fact, federal/state regulations were found to be disruptive to the overall annuity sales process. Specifically, broker-dealer firms stated that regulations make it more difficult to replace or exchange one annuity for another, lengthen the turnaround time to complete an annuity sale, and delay the speed of bringing new products to market—potentially affecting consumer choice and the ability of firms to appropriately cater their product offerings to meet consumers' needs.



[CREATING EFFICIENCIES BENEFITING CLIENTS]

Americans today face unprecedented retirement income challenges as fewer consumers are covered by traditional pension plans and are likely to live longer than prior generations. As a source of lifetime income, annuities have been identified as a means to address numerous risks facing retirees in this new retirement paradigm. As a result, demand for lifetime income products has been increasing. Broker-dealers have expressed their willingness to sell more lifetime income products during the next year to meet this increasing demand. Yet regulatory obstacles remain.

Both state and federal regulations are viewed as a major impediment to the sale of annuities. Mandated requirements are considered to strain time and resources to comply. State and federal regulations are viewed as causing disruptions, negatively affecting client experiences, and elongating the sales process.

A first step to ease regulatory burdens: passing legislation to establish the National Association of Registered Agents and Brokers—a one-stop, national licensing clearinghouse for financial professionals operating in multiple states.

Regulations to maintain state insurance licenses are considered to be burdensome to financial advisors as the processes are redundant and most financial advisors are licensed in more than one state.

An initial first step to ease regulatory burdens would be including passing legislation to establish the National Association of Registered Agents and Brokers (NARAB)—a one-stop, national licensing clearinghouse for financial professionals operating in multiple states. Additional steps could then be taken to eliminate redundant regulations, standardize regulations and forms across jurisdictions, and reform regulatory oversight in a way that continues to support comprehensive oversight and does not inadvertently affect the vast majority of financial professionals who are acting with the best interests of their client in mind.

Creating these efficiencies will enable financial advisors to best serve their clients across America as they consider retirement income options.

The Insured Retirement Institute (IRI) is a not-for-profit organization that for more than 20 years has been a mainstay of service, commitment and collaboration within the insured retirement industry. Today, IRI is considered to be the authoritative source of all things pertaining to annuities, insured retirement strategies and retirement planning. IRI proudly leads a national consumer education coalition of nearly twenty organizations and is the only association that represents the entire supply chain of insured retirement strategies: Our members are the major insurers, asset managers, broker-dealers/distributors, and 150,000 financial professionals. IRI exists to vigorously promote consumer confidence in the value and viability of insured retirement strategies, bringing together the interests of the industry, financial advisors and consumers under one umbrella. IRI's mission is to: encourage industry adherence to highest ethical principles; promote better understanding of the insured retirement value proposition; develop and promote best practice standards to improve value delivery; and advocate before public policymakers on critical issues affecting insured retirement strategies and the consumers that rely on their guarantees.